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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The Prime Minister.

ALTHOUGH THE dinner at the Middle Temple last Saturday at which the Prime Minister was a guest was private and no speeches were delivered, we may fittingly refer to this hospitality offered to a member of the profession who has attained to such eminence in the State, and on whom so great a weight of responsibility now rests. At the beginning of Mr. LLOYD GEORGE'S Premiership we quoted as suitable to him the words:

"The pillar of a people's hope,
The centre of a world's desire."

And, indeed, there was never a period in the history of the world when there was a louder cry of humanity for leadership to point a way out of the *impasse* of its troubles. We know from Mr. LLOYD GEORGE'S speeches, and from the disclosure of his attitude towards the Austrian offer of last year, both his determination to see the end of militarism, and his readiness to accept an adjustment based on the withdrawal of German claims to military predominance; and on the other side of the Atlantic is President WILSON with the same determination and the same readiness. The profession will follow Mr. LLOYD GEORGE in the completion of his task—a task in which he has such inestimable support—with the warmest sympathy.

The Re-Settlement of Officers in Civil Life.

WE DESIRE to call attention to the notice which is printed elsewhere with respect to the formation of the Inns of Court Regimental Association. The object of the association is to assist in the re-settlement of officers in civil life, especially those who have obtained their commissions through the Inns of Court O.T.C., and it will, we have no doubt, receive cordial support.

The Swiney Prize for Jurisprudence.

WE PRINT elsewhere an announcement that the next adjudication of the Swiney Prize for Jurisprudence will be made in January, 1919. The award is made alternately to Medical and to General Jurisprudence, and the coming award will be to Medical Jurisprudence. The list of recipients under General Jurisprudence is an interesting index to English jurists of recent times. It includes Sir HENRY MAINE, Sir ROBERT PHILLIMORE, Prof. HOLLAND, Sir FREDERICK POLLOCK and Prof. MAITLAND, and Sir JOHN SALMOND.

A League of Nations.

THE RAPID spread of the idea of a League of Nations is a hopeful—perhaps the most hopeful—sign of the times. Viewed at first as an impracticable ideal, a mere repetition of schemes of former times which came to nothing, we do not, perhaps, go too far in saying that it is now winning universal acceptance with people who realise that war, as carried on under modern conditions, is likely to be destructive of civilisation. The principles of the American League to Enforce Peace, and of the League of Nations Society here, have had very convincing advocates, and various particular schemes have been put forward by these and other societies which have been summarized in Mr. WOOLF'S "Framework of a Lasting Peace," which we reviewed early this year (*ante*, p. 289). The project was discussed in the House of Lords on 19th March on Lord PARMOOR'S motion, and the debate was the occasion for the formulation by Lord PARKER of the scheme which he had prepared (*ante*, p. 448). But this is only a short summary of the influences in favour of the scheme which have been accumulating.

The French League of Nations Report.

THE SCHEME for a League of Nations has recently received further support in various quarters. Mr. BARNES, of the War Cabinet, has urged that the Allies should at once begin by forming such a league on their own account. The Committee appointed by the French Government last July to consider the question has just issued its report, from which it appears that the principles on which a League of Nations should be founded have been unanimously adopted, and the Committee recommend "that the French Government should now submit them to the Allies for their consideration, in order that the Allied Governments may arrive at a complete agreement on all points concerned before the negotiations for peace are opened"; and it is contemplated that the project for a League of Nations will form part of such negotiations. We have not the material for stating the present position of the matter in Germany and Austria, but the current Monthly Report of the League of Nations Society gives various extracts which indicate that there is widespread adherence to the scheme there, and Count HERTLING is reported to have said:—"If the world should one day unite in an International Peace League, Germany would unhesitatingly and joyfully join in."

Viscount Grey on a League of Nations.

BUT PROBABLY no one at the present time can speak more authoritatively on the subject than Viscount GREY, and in his pamphlet, "The League of Nations," just published by the Oxford University Press, he states two conditions as being essential to the success of the scheme. First, the idea must be adopted with earnestness and conviction by the Executive Heads of States; and, secondly, the Governments and Peoples of the States willing to found a League of Nations must understand clearly that it will impose some limitation upon the national action of each, and may entail some inconvenient obligation. As to the first condition, he points out that it was not present before the war, and it is not possible to say affirmatively that it is present now. Of course, President WILSON is a strong supporter of the scheme, and he favours a scheme backed—as to be effective it must be—by force. "If," he has said, "the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind" (61 SOLICITORS' JOURNAL, p. 210). Utterances on this side have not been so clear as might be desired, but last December Mr. LLOYD GEORGE said that the machinery of a League of Nations was being established at Versailles, and intimated that he would welcome the adhesion of Germany, provided this meant the people of Germany, and not the military caste (*ante*, pp. 189, 190). And Lord GREY writes to the same effect. A League of Nations such as intended by President WILSON must include Germany, but this is impossible until she has laid aside the ambitions of military force. The second condition he explains as meaning:—

> "The stronger nations must forego the right to make their interests prevail against the weaker by force, and all the States must forego the right, in any dispute, to resort to force before other methods of settlement, by conference, conciliation, or, if need be, arbitration, have been tried."

This is the limitation which must be accepted, and it carries the obligation that, if any nation will not observe it, the others must one and all use their combined force against it. This might be economic pressure only, but there must be readiness to use military and naval force as well:—

> "It must be clearly understood and accepted that defection from or violation of the agreement by one or more States does not absolve all or any of the others from the obligation to enforce the agreement."

Anything less than this, says Lord GREY, would be of no value, and he puts the question:—

> "Are the nations of the world prepared now, or will they be ready after the war, to look steadily and clearly at this aspect of the League of Nations, at the limitations and obligations that it will impose, and to say, whole-hearted and convinced as they have never been before, 'We will accept and undertake it'?"

This limitation and this obligation have been, Lord GREY points out, accepted by individuals, and the acceptance is the base of civilization. The course of the present war shews that they must be accepted as between nations in order to preserve civilization. The inhuman practices of Germany—though all war is inhuman—have forced similar practices on the Allies, and war is now a matter of the ruthless and unlimited application of scientific discovery to the destruction of human life, combatant and non-combatant. And the next war will be worse than this one. To prevent it the Allies must set forth, as President WILSON has already set forth—

> "the idea of a peace secured by mutual regard between States for the rights of each, and a determination to stamp out any attempt at war, as they would a plague that threatened the destruction of all. When those who accept this idea and this sort of peace can in word and deed speak for Germany, we shall be within sight of a good peace."

And this establishment of a League of Nations, concludes Lord GREY, "is more important and essential to a secure peace than any of the actual terms of peace that may conclude the war; it will transcend them all."

Mr. H. G. Wells on "The League of Free Nations."

OUR SUMMARY of recent incidents in connection with a League of Nations would hardly be complete without a reference to Mr. WELLS' "In the Fourth Year: Anticipations of a World Peace." No doubt there are people to whom the subject as expounded by a popular novelist will appeal more strongly than when set forth by statesmen and professed publicists. Was it not in the "War in the Air" that Mr. WELLS terrified us before 1914 with a vision of what war in the future would be? Fortunately there is not yet the universal destruction which, if we remember rightly, he pourtrayed, but we are on the road to it; and writing on the same lines as Lord GREY, Mr. WELLS foretells that this war will be nothing to the happenings in the next. When there are not hour-long air raids such as London knows, but week-long raids, we shall be able to gauge the really horrible possibilities of the air war. And in Mr. WELLS' view these possibilities are in our hands, and not in the hands of the Germans; and his opinion on the submarine question—if we may accept him as a safe guide—is reassuring. "In addition the Germans are at a huge disadvantage in their submarine campaign. Their submarine campaign is only the feeble shadow of what a submarine campaign might be." For all this horror of destruction Mr. WELLS' remedy is a League of Free Nations, and he thinks that the difficult question of limitation of sovereignty can be dealt with as a similar question was dealt with by the American States a hundred and fifty years ago. They were jealous for their separate sovereignties, and only delegated certain powers to the Federal Government; but the law and practice of the constitution have done the rest and made the Federal Government effective while leaving great latitude to the States. And in the realisation of the League Mr. WELLS sees three stages—a preliminary League of the Allied Nations, then the Peace Congress, and then the permanent establish-

ment of this Congress as the League. "A Peace Congress, growing permanent, may prove to be the most practical and convenient embodiment of this idea of a League of Nations that has taken possession of the imagination of the world." Mr. WELLS diverges into some matters that are not strictly relevant to the main question, but his little book is a very useful contribution to the subject, and should do a good deal to popularize it.

Bequests for Masses.

IT IS close upon a century, as EVE, J., pointed out in *Re Egan* (reported elsewhere), since it was established that bequests for masses for the soul were void according to the law of England. But the time has perhaps come, or may shortly arrive, when that rule of law will have to be reconsidered. At all events, an attempt is to be made in the present case by appeal, if need be, to the House of Lords to obtain a reversal of the old rule that such bequests are illegal; and, indeed, there is much to be said against the present state of the law on the subject, which can hardly be regarded as satisfactory from any point of view, whether legal or otherwise. No doubt the advocates of the change will rely to a great extent on such technical arguments as the validity of masses at common law, the statutes removing religious disabilities, and the vagueness of superstitious uses; but what will, perhaps, weigh most with the ultimate tribunal is the fact that the present state of the law is an anomaly which has long survived the circumstances under which it came into existence, and is the relic of an age in which tolerance in religious matters was little known. It is one of the most important functions of the House of Lords to adjust the old case law so as to bring it into harmony with modern conditions. A striking instance of this is afforded by the recent case of *Bowman* v. *Secular Society* (61 SOLICITORS' JOURNAL, 478; 1917, A. C. 406), in which it was held that a bequest to a society denying the truth of Christianity was valid. It is difficult to believe that this decision would have been arrived at a hundred years ago, or when bequests for masses were first declared void. It is equally difficult to believe that in these days such bequests would for the first time be declared illegal. The attitude of the law towards all such questions, as Lord SUMNER pointed out, depends fundamentally on the safety of the State, and where experience proves that dangers once thought to be real are now negligible, the application of general rules may be varied by the particular circumstances of our time in accordance with that experience. There is a good deal of our law which requires adjusting to the spirit of the age, and perhaps no part of it more so than the law relating to charitable bequests.

Interest on Purchase Money.

WE HAVE observed of late a disposition in some quarters to stipulate for six, rather than for five, per cent. interest on the unpaid balance of purchase moneys and the amounts of any valuations. If there were no express condition, the vendor would not be entitled to so high a rate; and we venture to suggest that it is more proper, as it is certainly more reasonable, to fix the rate having regard to the return per cent. given by the reserve prices on the property, rather than to any temporary market rate. Some such idea of fairness in the transaction, and equality in the rents and profits and the stipulated interest, seems to be at the root of the rule, laid down in *Birch* v. *Joy* (3 H. L. Cas. 565), that the court always struggles to prevent a purchaser receiving the rents and profits without a correlative liability to pay interest on the balance of his purchase money. Of course, there will be extraordinary cases where even a penal rate of interest may be justifiable, and, in this connection, it will be remembered that a condition of sale binding a purchaser to pay interest according to an ascending scale is in the nature of a separate contract (which can be enforced against him), and not of a penalty (from which he could be relieved). It is noteworthy, moreover, that in some of our chief commercial centres—Manchester and Liverpool, Birmingham and Bristol—the stipulation in common use in and around the metropolis is considered so unfair that the common form conditions of their law societies contain a provision whereby a purchaser may discharge his liability to pay interest in case of delay caused by the seller, by duly appropriating the purchase money, and this expression of opinion seems to indicate that, as a general rule, the common London form should not in the present day be pressed beyond its former limits, so as to be more unfair, or to work the hardship which, if it is unscrupulously and indiscriminately applied, is possible.

Mr. Joseph H. Choate.

A BIOGRAPHICAL SKETCH of the late Mr. JOSEPH H. CHOATE, for six years Ambassador for the United States to this country, has recently been published. The career of Mr. CHOATE as Ambassador was eminently successful, and he became widely known as an effective public speaker and a charming companion. But with his career as leader of the Bar of New York English lawyers are not so familiar, and they will read the work of Mr. STRONG, the biographer, with interest as supplying much information with regard to the practice of the law in New York. We need not remind our readers that the distinction between barristers and solicitors is not recognized in the United States, and that the members of a legal firm bestow their attention upon work which can be transacted within their offices, or attend the courts as advocates, according to their expectation of success. Mr. CHOATE received his education at a law school and at Harvard, and at an early age joined the firm of BUTLER, EVARTS & Co. Mr. EVARTS had an extensive practice in cases tried by juries and in equity cases. He passed his days in the courts, and had no time for the study of his cases, which were carefully read and noted by young CHOATE, who thereby gained experience and gradually became qualified to conduct in court the cases which he had prepared in his office. In his own words, he obtained his knowledge from reading at home and fighting in the courts—principally from fighting in the courts. Mr. CHOATE gradually retired from work in the office, and became an active court lawyer, prominent in the examination and cross-examination of witnesses and in addresses to juries. At a later stage his experience widened. He argued cases in the appellate courts and in the Supreme Court of the United States; questions relating to testamentary and international law, disputes between railways, and a multitude of important cases relating to commercial law. One of his greatest efforts was in the argument of the case relating to the constitutionality of the Income Tax Law. All these cases were carefully read and considered, though he mentions that in his day "there were no such floods of books as those in which the law itself is now thoroughly drowned." When asked how he prepared his plan and speeches, he said "he thought them out, but seldom wrote them out." He seems never, even after his appointment as Ambassador, to have formally retired from the practice of the law, though we have heard that he had amassed an enormous fortune. Mr. STRONG informs us that the character of the business in New York and other great cities has wholly changed, that it is more often transacted out of court, as in the case of receiverships and the amalgamation and reconstruction of companies. This business is so lucrative that it absorbs the attention of the leading practitioners and causes them to withdraw from litigation in the courts. But he thinks that Mr. CHOATE's abilities would have led him to the front rank of success under any changes in legal procedure.

The Case of Mr. Scott Duckers.

WE HAVE received a statement on the case of Mr. SCOTT DUCKERS which deserves careful consideration. That he is a conscientious objector to military service is well known. "He has," we are told, "already been court-martialled four times, and has served more than two years in prison with hard labour. If he completes his present sentence he will have been continuously imprisoned with hard labour for three and a-half years." A sentence of two years' hard labour is the utmost allowed by law, and the utmost that even a strong man can stand. Mr. DUCKERS' prolonged imprisonment is due to repeated sentences for what is substantially the same offence,

and against such repeated sentences frequent protests have been made in Parliament and elsewhere. We understand that the War Office undertook some time ago that this system should not be continued. However that may be, it is opposed to reason and humanity, and reflects grave discredit on the authorities responsible for it. It appears that the imprisonment is having its natural effect on Mr. SCOTT DUCKERS, but he does not desire that his case should be considered apart from a general inquiry into the whole situation. The case made by Mrs. HOBHOUSE's book, "I Appeal unto Cæsar," has, we believe, never been answered, and we are not aware that an official answer has even been attempted. Prof. DICEY had a very interesting article in the *Nineteenth Century* for last February, in which the principles applicable to conscientious objectors were considered, and this is valuable for those who wish to pursue the matter on general grounds. But the practical points are that Parliament has legalized the position of the conscientious objector, and that even if a man does not fulfil the legal requirements for exemption, and is liable to punishment, the punishment should be reasonable and humane. It may be noticed that at the Conference of the National Union of Railwaymen, held at Edinburgh this week, a resolution has been unanimously passed protesting against any victimization by railway companies and other employers of men who exercise their legal rights as conscientious objectors. It is a remarkable thing that a war prosecuted abroad for high ideals should be accompanied by deplorable oppression of individuals at home.

The Destruction of Crops by the War Office.

AMONG THE War Orders which we print this week will be found the Growing Grain Crops Order, 1918. This forbids any person to feed cattle on growing crops in such a way as prejudicially to affect their growth. The Order is issued by the Food Controller, and shews a proper desire for the conservation of the food supplies of the country. It is interesting to compare this with the case of destruction of crops by the War Office which has been the subject of debate in Parliament and of correspondence in the Press. We do not doubt that circumstances might arise making such destruction necessary, just as houses may be destroyed to stop a fire from spreading. But it is a little difficult to believe that there are in the present cases circumstances to justify such divergence between the Food Controller and the War Office.

Dual Cabinets and the Reserve Powers of the Constitution.

THE decision of the Government to set up a second Cabinet to deal with domestic affairs reminds one of three celebrated writers on Constitutional Law, and the comment which, in their different ways, each of them has made on our Constitution. WALTER BAGEHOT, in his treatises on the British Constitution, pointed out that the vague and backboneless character of our Constitution—which contrasts so markedly with the precise symmetry of its Continental and American counterparts—is really in keeping with the character of the British people, and serves a useful practical purpose. It means that the Constitution can readily be adapted to suit novel purposes, which, in the case of a rigid and unadaptable constitution, could only be effected by a revolution. DICEY, in his "Law of the Constitution," has made a similar comment; indeed, he regards its "flexibility" as the chief merit of our constitutional system. And DELOLME, the great Swiss critic of our political institutions, pointed out the existence—down beneath our working arrangements of Monarchy and Commons—of large reserve powers in fundamental laws which can be made use of in great crises and emergencies. Thus, in 1832 the Royal Prerogative to create Peers was turned to the unexpected end of overcoming aristocratic resistance to Reform. And in the days of JOHN WILKES, the right of every citizen to trial by his peers destroyed the attempts of the House of Commons to tyrannize over popular rights.

Now in just the same way the present war has illustrated the great utility of these hidden reserve powers. But for them it would not have been practicable to do what the War Cabinet now proposes to do—namely, set up two Cabinets—one for War and one for Domestic Purposes. In the United States only Congress could do this, and the difficulties of amending the Constitution would prove too formidable even for Congress. The Executives of American and Continental countries are bodies of fixed character and legal status, on which no encroachment is possible. Far otherwise with the British Cabinet. In the eyes of the law it is only a Committee of the Privy Council—one Committee among many—and scarcely ever *Primus inter pares*. Indeed, until the other day—to be exact, until the year 1905—it was not legally recognized at all. But in that year the Premier of the day was accorded legal recognition and social precedence by an Order in Council; and from that day on the Cabinet ceased to be in the eyes of the law a non-existent body. But since it is merely one of several Committees of the Commons, it is easy to create another Privy Council Committee; and that is the ingenious plan which the Government propose to adopt. It should be added, however, in reference to the United States Constitution, that, in practice, it has, in the present emergency, enabled the President to be clothed with almost dictatorial powers.

As a matter of fact, the actual proposal is quite novel in our history. But in Tudor days, which in some great ways resemble our own, a similar dualism of governing bodies did exist. The Tudor Age had its own economic revolution, just as we had our Industrial Revolution of a century ago; and each created great domestic problems which only Parliament could solve. Like our own, it was an age of furious foreign struggle for liberty and power in Europe; and the struggle for liberty abroad was necessarily accompanied, as with us, by much curtailment of ancient liberties at home. But the dualism of executives set up by the Tudors differed somewhat from our own. It was not a dualism of Home and Foreign affairs. It was a dualism of government in Church and State. The State was handed over to the Star Chamber, the Church to the Court of High Commission. Each body was controlled by the Crown and the Premier of the day (then known as the Lord High Treasurer, and sometimes the Secretary of State), and he was the practical link who kept each of these powerful institutions working harmoniously to carry out a common national policy.

Under the new scheme it is proposed that the Domestic Cabinet, or Privy Council Committee, shall solve all of its own problems, so far as they are not connected with the war. Only when the war is concerned, will the War Cabinet claim a veto on its colleague's decisions. Presumably the Boards of Education, Trade, Local Government, Agriculture and Fisheries, the Ministries of Labour, Pensions, National Service, and Reconstruction, the Home, Scottish and Irish Offices, the Post Office, and the Treasury will be the chief bodies represented by their heads in the Domestic Cabinet. But the moment these names are suggested one of the difficulties in the way of this dualist system is obvious. Several of these Ministries have a war, as well as an industrial, side. For instance, the Ministry of National Service, the Home Office, and the Irish Office have military problems to face and assist. Even the Boards of Agriculture, Trade, and Labour cannot ignore the existence of a war. And most certainly the Chancellor of the Exchequer cannot afford to do so.

One excellent effect of the new system—perhaps one not expected or desired by its authors—is almost certain to be this: The Domestic Cabinet will be committed to making the best of our industrial fortunes during and after the war. By their success in doing this they will be judged, not by victory in the European conflict. By their failure, if they fail, they will earn condemnation on all sides. Therefore they *must* concentrate on saving industry from ruin and disaster. And so they will gradually form a counterpoise to military demands on men, materials, and money. They will themselves demand men, money, materials, for the salvation of our commerce and manufactures. They will meet the war demands with a rival

industrial demand not less insistent. For, unlike a War Cabinet—the *kudos* of which rests in winning the war—the Domestic Cabinet cannot afford to allow industrial ruin for the sake of a more sweeping military triumph. They will become inevitably a moderating force, pointing out the importance of the ends of peace. Perhaps, indeed, the irreconcilable difference of aims between War Cabinet and Domestic Cabinet will ultimately lead to political rivalry between them. This is one of the dangers which will have to be faced squarely by the Premier when he sets up his new scheme. Our statesmen, unfortunately, seldom take the trouble to study either Political Economy or Constitutional Law. If they did, perhaps their policy would be a little more far-seeing than it is; and obvious mistakes, recklessly made, would be avoided before they lead to constitutional disaster.

The Development of German Prize Law.

By Charles Henry Huberich, J.U.D., D.C.L., LL.D., of the United States Supreme Court Bar; and Richard King, Solicitor of the Supreme Court, London.

I.

It is the purpose of the present study to consider some of the more important of the decisions[1] of the German Prize Courts, taking up the various topics substantially in the order of the articles of the Prize Code, which in turn follows the order of presentation in the Declaration of London. The principal amendments to the Prize Code promulgated up to the 17th April, 1918, will also be noted, as well as the views announced in later works and articles on this topic.

Since the formation of the German Empire there has been no legislative enactment upon the subject of prize law, except the Law of 3rd May, 1884,[2] The Law of 1884 provides:

> Art. 1.—The decision in regard to the legality of a capture in war is to be rendered by specially constituted tribunals (prize courts).
>
> Art. 2.—The place of sitting and composition of prize courts, the procedure in cases brought before them, and the duties imposed on other administrative authorities, Imperial as well as State, in respect of their co-operation with such courts, will be determined by Imperial ordinance.

The Prize Code (*Prisenordnung*) of 30th September, 1909,[3] and the Prize Courts Ordinance (*prisengerichtsordnung*) of 1st April, 1911,[4] were promulgated on 3rd August, 1914.

Procedure is regulated by the Prize Procedure Ordinance of 15th April, 1911, as amended. The preliminary proceedings take place before a prize board (*Prisenamt*). Two prize courts are created, one having its seat at Hamburg, the other at Kiel. The prize court consists of five judges, of whom the president and one member must be of the legal profession. The remainder of the court is composed of a naval officer and two laymen, representing respectively the shipping and commercial interests. The government is represented by an imperial commissioner. The owner of the ship or cargo, and other persons interested, have the right to appear as claimants, either in person or by attorney. Alien enemies have the same right to appear or be represented as other persons. If no claim is interposed, the court proceeds to a determination of the case on the basis of the claim submitted by the imperial commissioner. An appeal lies from the prize courts to the Superior Court of Prize (*Oberprisengericht*) in Berlin. This appellate court consists of seven judges, of whom three belong to the legal profession, one is a naval officer, one a representative of the Ministry for Foreign Affairs, and two are lay judges. Proceedings in all the courts are public.[5]

The Prize Code of 30th September, 1909, has been amended by the Proclamations of 18th October, 1914,[6] 23rd November, 1914,[7] and 14th December, 1914,[8] amending the contraband lists. These proclamations were incorporated in and superseded by the Ordinance of 18th April, 1915,[9] which makes sweeping changes in the lists of absolute and conditional contraband, and amends Arts. 33, 35 and 40, so as to assimilate the German law relating to the carrying of contraband to the English law on these points. The lists of contraband were again amended by the Ordinances of 31st May, 1916,[10] 25th June, 1917,[11] and 18th January, 1918.[12] Further important changes were made by the Ordinances of 22nd July, 1916,[13] regarding presumption of hostile destination, and of 16th July, 1917,[14] regarding enemy character.

Legal Nature of the Prize Code.

Art. 1 of the Prize Code provides:

> During a war the commanders of H.I.M. ships of war have the right to stop and search enemy and neutral merchant vessels, and to seize—and, in exceptional cases, to destroy—the same, together with the enemy and neutral goods found thereon.

The Prize Procedure Ordinance specifically provides that it is issued in pursuance of the Law of 3rd May, 1884, but there is no corresponding reference in the enacting clause of the Prize Code. The Prize Code is, in form, not a law. It was issued by the Emperor, who states in the introductory clause:

> I approve the following Prize Code, and decree that the commanders of my navy shall proceed in accordance therewith in applying the right of prize.

Is the Prize Code a law or is it merely a set of instructions to naval commanders? The question is one of considerable practical importance. Upon its answer depends the question as to the binding force of the provisions of the Prize Code relating to the payment of damages.[15]

The question is not a new one in German jurisprudence. During the war against Denmark, an ordinance was issued in Prussia under date of 20th June, 1864.[16] There was no legislative enactment expressly authorizing the promulgation of such an ordinance, and the government based its right to issue the same on the crown prerogative. By a small majority, the Prussian House of Representatives declared the ordinance invalid, especially because it provided for judicial procedure, a matter which, under the constitution, was exclusively within the scope of the legislative power. The government conceded merely its inability to prescribe the procedure before the ordinary courts, and modern writers regard the Ordinance of 1864 as supportable only as instructions issued by the military powers, and not as a law.[17]

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[1] The cases are herein cited by date. A number of cases are published in full in the Hanseatische Gerichtszeitung, in the Zeitschrift für Völkerrecht, and in Niemeyer's Zeitschrift für internationales Recht. Excerpts from decisions are published in the Deutsche Juristen Zeitung, in Recht, and in the Leipziger Zeitschrift für deutsches Recht. The decisions in the cases of The Fenix, The Elida, The Glitra, The Maria, The Indian Prince, and The Appam are published in an English translation (herein made use of by the courtesy of the publishers) in the American Journal of International Law; the decisions in The Medea, The Batavier V., The Elida, The Maria, and The Primavera are published in a French translation in Clunet's Journal du droit international. A number of the decisions have also been published in English in Lloyd's List, and in an Italian translation in the Rivista di diritto internationale. Some of the decisions affecting Dutch interests are published from time to time in the Netherlands Orange Books and in Grotius, Annuaire de droit international. A digest of the current decisions is published in International Law Notes (London).

[2] Reichsgesetzblatt (1884), 49.

[3] Reichsgesetzblatt (1914), 275.

[4] Reichsgesetzblatt (1914), 301.

[5] Huberich and King, Emergency Legislation of Germany, Part IV., Prize Law, 59 Solicitors' Journal, 70 *et seq.*; Huberich and King, German Prize Code, XVI-XVII.

[6] Reichsgesetzblatt (1914), 441.

[7] Reichsgesetzblatt (1914), 481.

[8] Reichsgesetzblatt (1914), 509.

[9] Reichsgesetzblatt (1915), 227.

[10] Reichsgesetzblatt (1916), 437.

[11] Reichsgesetzblatt (1917), 554. See Appendix.

[12] Reichsgesetzblatt (1918), 43.

[13] Reichsgesetzblatt (1916), 773, more fully noted below.

[14] Reichsgesetzblatt (1917), 631, more fully noted below.

[15] Heilfron, Der Lusitaniafall, Juristische Wochenschrift (1915), 485.

[16] Preussisches Gesetzblatt (1864), 369. The Ordinance was published on 16th July, 1864. For a summary of its provisions see Huberich and King, German Prize Code, IX-XII.

[17] Arndt, Kriegsverordnungen, Deutsche Jurisden Zeitung (1914), 1152, 1154.

As to the legal nature of the present Prize Code, a great diversity of opinion exists among the authorities. Heilfron[18] regards it merely as a set of instructions issued by the Emperor as commander-in-chief of the navy. Rissom " views it as a collection of rules of substantive law, while Heymann [20] and Rehm [21] attribute to it a mixed character, partly a set of rules for the guidance of naval officers, partly a set of rules of substantive law. Meene [22] regards it as a set of instructions, and not as a source of law, though of importance as indicating the correct rule to be applied by the courts.

In regard to this point, the Superior Court of Prize says in The Elida: [23]

> " The Prize Code contains the principles laid down by the Emperor as commander-in-chief within his Imperial jurisdiction for the practice of prize law pertaining to naval warfare, and is, therefore, primarily law not only for the navy, but also for the inland authorities, particularly the prize courts, in so far as they have to pass upon the legality of the actions of commanders at sea falling within the prize law."

The question is more fully discussed by the Hamburg Prize Court in The Zaanstroom: [24]

> " The German law of prize is contained in the Prize Code of 30th September, 1909 (Reichsgesetzblatt (1914), 275 *et seq.*), which in its contents is substantially identical with the Declaration of London. It is incorrect to assume that the Code is exclusively a set of instructions to naval commanders; the contrary is the case, as is shown not alone by the introductory words: 'I approve the following Prize Code and decree . . .,' but especially by a number of its provisions which can have application only to activities of prize courts, and not to the actions of commanders, as, for example, the provisions regarding the award of damages (arts. 8, 12) and condemnation (arts. 17, 41, 42). Adopting the views of Heymann [D. J. Z. (1914), 1047] and Arndt [D. J. Z. (1914), 1154], the Prize Code must be regarded as an enactment having the force of law and based upon the Imperial Law of 3rd May, 1884, relating to prize procedure [Reichsgesetzblatt (1884), 49]."

The question as to the nature of the Prize Code appears, therefore, to be settled in favour of the view that it has, in part, the force of substantive law. This view has been confirmed by the Superior Court of Prize. Speaking of art. 37 (2), this court, in The Semantha, [25] says:

> " This rule is externally clothed in the form of an instruction to the naval commanders just as the entire Prize Code is, in form, such a set of instructions. But it contains to a large extent rules of substantive law, as has been held repeatedly by this court. There is no basis for assuming that the article here involved is solely an instruction to the commanders. On the contrary, the reasons above given compel its recognition as a rule of substantive law."

Some articles are, however, clearly in the nature of instructions to the commanders, *e.g.*, arts. 114, 124-131. The Schedule annexed to the Code is an order signed only by the Chief of the Admiralty Staff, dated 22nd June, 1914, relating to the treatment of armed merchant vessels, and is sustainable, if at all, under the power delegated by the Emperor to make such changes in the provisions " as are not of a fundamental nature."

Thus, in The Glitra: [26]

> " As Wehberg (Osterreich, Zeitschrift für öffentliches Recht, II. 3, p. 282) correctly points out, Heilfron [Juristische Wochenschrift (1915), 486] goes too far when he wishes to give to the Prize Code the importance only of a command given by the Emperor to the commanding officers of the navy. The Prize Code contains, to a great extent, substantive law. But with regard to the precise question under dispute, Heilfron's characterization is correct. This article (114) is indeed only a command to the commanders of men-of-war. The Commander-in-Chief but not the legislator speaks. He does not desire to make substantive law, and does not do so."

[18] Der Lusitaniafall, Juristische Wochenschrift (1915), 486.
[19] Dietz, Taschenbuch des Militärrechts, 3rd ed., 546, cited in Deutsche Juristen Zeitung (1915), 910.
[20] Das Prisenrecht des Deutschen Reichs, Deutsche Juristen Zeitung (1914), 1047.
[21] Neue Fragen des deutsche-englischen Seekriegs, Deutsche Juristen Zeitung (1915), 454.
[22] Die staatsrechtlichen Grundlagen der deutschen Prisenordnung, Deutsche Juristen Zeitung (1915), 910. He, therefore, does not regard the provisions concerning damages as necessarily creating substantive rights.
[23] 18th May, 1915.
[24] 1st June, 1915.
[25] 6th October, 1916.
[26] Superior Court of Prize, 17th September, 1915.

Law Administered by the Prize Courts.

The law applied by the prize courts is national (municipal) law, and this national law must be applied even if in conflict with the principles of international law. This doctrine was unqualifiedly laid down by the Hamburg Prize Court in The Zaanstroom. [27]

> " Some of the claimants in the oral arguments expressed the view that the prize courts must apply the rules of international law, not those of national law. . . . This view cannot be adopted. The prize courts are national tribunals. They are established by their own states to determine whether the organs of the state carrying on the maritime war have complied with the rules which they have been instructed to follow, and to pass on the legal consequences of their acts. From this it follows that the courts have to judge according to the law prescribed by their state, regardless of whether this law is in harmony with existing principles of international law or not. Whether this is so or not is not the province of the prize court to determine, but is left to the belligerent state, which alone is responsible in this regard to other states. The view sometimes advanced by the older authorities, that prize courts are bound to apply international law, even though the rule in question has not become a part of the national law, is to be absolutely rejected. [*Cf.* Heymann, D. J. Z. (1914), 1048; Wehberg, Seekriegsrecht, 321.] Practically it would be impossible to carry out this idea. In many cases the so-called rule of international law is uncertain and unascertainable. Where this is not the case, the rule may have ceased to be applicable owing to the attitude of the respective belligerents, or to a change in the conditions forming the basis of its application. For example, it cannot be demanded that one belligerent shall continue to be bound and to require its prize courts to apply an international convention which has been violated by the opposing belligerents, although such convention expressly provides that it is to remain in force in the event of war. Furthermore, it requires no detailed argument to demonstrate that certain rules of international customary law have been affected and have become inoperative by reason of new methods of naval warfare, as the submarine warfare. Finally, the argument that if a prize court applies national law, an international prize tribunal such as provided for in the Twelfth Hague Convention of 18th October, 1907, might as a court of appeal apply a different law from that applied in the tribunal of first instance, falls to the ground, because such an international prize tribunal does not exist. It was the realisation that the establishment of such a tribunal (described as 'visionary' by Heymann, *loc. cit.*) would require a unification of substantive prize law as a condition precedent, that led to the summoning of the London Conference on Naval Warfare in 1908, whose labours were rendered nugatory by the opposition of England. Before an international prize tribunal could have begun its labours it would have been necessary that the law contained in the Declaration of London should have become a part of the national law of each of the states parties thereto, at least as regards the other contracting states."

This is in accord with the views of recent German writers. So Wehberg: [28]

> " As prize courts are national courts, they must apply the law prescribed by their state, even though in the case before them this law is in conflict with international law. The view formerly frequently announced in England and elsewhere, that prize courts are bound to administer international law, is based on a misconception. . . . If a state desires to fulfil its international obligations, it is bound to bring its national law into harmony with international law. It cannot be asserted that national prize jurisdiction is to be criticised because by its means arbitrary rules of naval warfare are set up and imposed on other states. Prize courts always remain the organs of an international person, i.e., of their state, which remains responsible to other states for a proper application of international law. The rules applied by the prize court bind neither other states nor the home state. The government may at any time revise the national law by a recognition of the rules of international law.
>
> " Prize courts may not assume the responsibility of a revision of national law, not even for the purpose of bringing the national law into harmony with international law. Where the national law conflicts with international law, the national prize courts are bound by the national law. If there exists no express provision in the national law, the question must be determined by resort to the other principles of national law. Only when these also fail to determine the question, may the omissions in the national law be supplied by bringing in the rules of international law. . . . From this it follows that national prize jurisdiction is essentially not a matter of international law, but of national public law."

While Schramm [29] states that prize courts must decide according to the national and international law of prize, he continues by saying that the latter is applicable only in so far as it has become a part of the national law. So also Heilborn: [30]

[27] 1st June, 1915.
[28] Seekriegsrecht (1915), 321.
[29] Prisenrecht (1913), 368.
[30] Grundbegriffe des Völkerrechts (1912), 91

"The court obtains jurisdiction under a law of the state. If it declines to obey the laws of the state it would be placing itself above the state and be denying the very source of its authority." [31]

The law administered by the prize courts is to be found primarily in the Prize Code, either in its express provisions or by analogy.

The prize courts must also apply the provisions of treaties to which the German Empire is a party, and the texts of which have been promulgated as law by publication in the Gazette. Thus, in The Fenix,[32] the Superior Court of Prize says:

"The Court of Appeal agrees with the claimants in presuming that the stipulations of Convention No. 6 of the Second Hague Conference must be taken into consideration in the case under review, although they have not been expressly included in the Prize Code. Why this was not done need not be discussed. At all events, the convention named is a state contract ratified by the German Empire, and published in the Gazette, and as such it must be taken into consideration by the prize courts."

But it is essential that the treaty was duly promulgated as law.

"A prize court cannot take cognizance of an agreement between the German Government and the government of a neutral country whereby it was stipulated that a particular meaning should be attached to certain words in the list of contraband. It was accordingly held that sawn fir sleepers were subject to condemnation, although it was shewn that by agreement between the German Empire and Sweden, the country of the claimant, only mining timber and fuel wood should be regarded as contraband. To be considered by the court such agreements must be published in the form of a law."[33]

Equally binding upon the prize courts are the treaties entered into between Prussia and other countries, and to which the German Empire has succeeded. Chief among these was the Treaty of 1st May, 1828, between the United States and Prussia, reviving certain provisions of the Treaties of 1785 and 1799 between the two countries.[34]

(To be continued.)

Books of the Week.

Emergency Practice.—The Courts (Emergency Powers) Acts, 1914 to 1917. Together with the Rules and Forms Issued Thereunder. Edited with Notes of Cases decided under each section, &c. By Albert D. Bolton, M.A., LL.D., Barrister-at-Law. Fourth Edition. (Reprinted with Additions.) Stevens & Haynes. 2s. 6d net.

Nonconformists.—The Churches and the State. By T. Bennett, LL.D., B.A. (Lond.). (Reprinted with Additions from the Law Quarterly Review.) The Kingsgate Press. War price, 4s. net.

Captain Lionel Pilleau Clay, Yeomanry, of St. John's Wood Park, N.W., and formerly of Rastrick House, Rastrick, Yorks, head of Harrow School in 1898, barrister-at-law, who was killed in action on 18th February, left property of the value of £7,019. He gave £200 to the endowment fund of Harrow School and £150 to Harrow School for an annual prize or prizes for the boy or boys considered by the headmaster to be most efficient in general knowledge and intelligence in each year.

[31] These views are of special interest in view of what was laid down by the 'English Privy Council in the case of The Zamora [(1916) 2 A. C. 77], where at p. 93 Lord Parker says: "It cannot, of course, be disputed that a prize court, like any other court, is bound by the legislative enactments of its own sovereign state. A British prize court would certainly be bound by Acts of the Imperial Legislature. But it is none the less true that if the Imperial Legislature passed an Act the provisions of which were inconsistent with the law of nations, the prize court in giving effect to such provisions would no longer be administering international law. It would in the field covered by such provisions be deprived of its proper function as a prize court. Even if the provisions of the Act were merely declaratory of the international law, the authority of the court as an interpreter of the law of nations would be thereby materially weakened, for no one could say whether its decisions were based on a due consideration of international obligations or on the binding nature of the Act itself. The fact, however, that the prize courts in this country would be bound by Acts of the Imperial Legislature, affords no ground for arguing that they are bound by the Executive Orders of the King in Council": p. 93.

[32] 17th December, 1914.

[33] The Grenland, Superior Court of Prize, 6th October, 1916.

[34] The William P. Frye. See diplomatic correspondence between the United States and the German Empire, especially the letters of Von Jagow, Minister for Foreign Affairs, to Ambassador Gerard, 4th April, 1915, and 7th June, 1915. The Indian Prince, Superior Court of Prize, 15th April, 1916. The Appam, 11th May, 1916.

CASES OF THE WEEK.

House of Lords.

PRICE v. GUEST, KEEN AND NETTLEFOLDS (LIM.)
22nd, 25th, 26th March; 17th June.

Workmen's Compensation—Fatal Accident—Method of Calculating Amount—"Continuous Employment by the Same Employer"—"Three Years Next Preceding" the Injury—Strike—Voluntary Absence from Work—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Sched. 1 (1) (a) (2) (c).

In March, 1916, a workman, who had for several years previously been employed by the respondents, was killed as the result of an accident in the colliery. In July, 1915, the men at the colliery came out on strike, pending negotiations for a new agreement to be settled by the Conciliation Board. The dispute was settled after the men had been out for one week, and they all returned to work on 22nd July, 1915, at increased wages. The employers admitted the claim of the dependants of the deceased workman, but disputed the amount.

Held, that for the purposes of calculating compensation the contract of service had not been terminated by the fact that, owing to the men being called out, there had been a break in the continuity of his work, and, therefore, compensation was to be calculated on his total earnings during the period of three years next preceding the injury, and not as the appellant contended, from 22nd July, 1915.

Appeal by the applicant from an order of the Court of Appeal (reported 61 Solicitors' Journal, 315; 1917, 1 K. B. 780; 10 B. W. C. C. 203), which set aside an award made by the learned county court judge at Merthyr Tydfil, in so far as it awarded the applicant £300 as compensation, and adjudged the amount payable by the employers to be £259 4s. The facts are fully stated in Lord Wrenbury's judgment.

The House took time for consideration, and by a majority the appeal was dismissed.

Lord Finlay, C., in giving his dissenting judgment, allowing the appeal, said: The sole question in dispute between the parties was the measure of compensation to be paid the dependants, as provided by Sched. 1 (1) (*a*) and (2) (*c*). The deceased was killed by accident in the course of his employment on 10th March, 1916, and a claim by his widow was made on the footing that the period of the deceased's employment by the same employer had been less than three years, in which case she would be entitled to the maximum compensation of £300. The employers contended that the deceased man had been in their employment during the three years next preceding the injury, so that the compensation was the amount of his earnings during the three years, namely £259 4s. The question, therefore, was whether there had been a break in the employment from 14th to 21st July, 1915. If there had been such a break, the employment would not have been continuous for the next three years, and the larger amount of compensation would be payable. The county court judge decided in favour of the applicant, giving her £300. His decision was overruled by the Court of Appeal, who held that there was in point of law no evidence on which the county court judge could find there had been such a break in the employment, and reduced the amount of compensation to £259 4s. The present appeal was brought asking this House to restore the award of the county court judge. If there was continuous employment it was not necessary that there should be continuous work. If the contract or contracts subsisted throughout the three years there might be intervals in the work. The man might be employed to work only for, say, two or three days a week. He might stop away from work with or without leave, and even unlawful absence would not interrupt the continuity of the employment, unless the employer dismissed the workman for it. As the absence of the deceased from work during the week 14th to 21st July, 1915, was wilful and not due to illness, or any other unavoidable cause, it was unnecessary here to consider the meaning of the words at the end of clause 2 (*c*) of the first schedule, "interrupted by absence from work due to illness or any other unavoidable cause," which had given rise to so much doubt and difficulty. That he was not working during the week 14th to 21st July, 1915, was clear. The question on which the county court judge and the Court of Appeal differed was whether, during that week, there was a break in his employment as well as in his work. That was a question of fact, and the only ground on which the decision of the county court judge could be reversed was that there was no evidence on which, if the case had been tried by a jury, the judge would have been justified in leaving the question to them. [His lordship reviewed the evidence:] In his opinion the appeal ought to succeed, and the award of the county court judge be restored.

Lord Atkinson regretted that he differed from the Lord Chancellor, and read a judgment giving his grounds for thinking that the appeal should be dismissed.

Lord Wrenbury agreed with Lord Atkinson. The widow here had applied for compensation. The onus, therefore, was on her to prove the facts establishing her right to compensation under the alternative mode of assessing it in Schedule 1, which, she asserted, was applicable in her case. She delivered particulars, and in her sixth particular she claimed that the period of employment had been less than three years, and that the earnings had been over £2 a week from 15th July, 1915. The employers' answer was that the employment had been for three years. They did not traverse the widow's statement as to earnings from 15th July, because, if she was right, the employment had been for less than three years. The county court judge found as a fact that for the period

beginning with 30th June, 1915, there was a contract, and further found that it came to an end on 14th July, 1915. He further found as a fact that "during the seven days the men were away" (namely from 15th to 22nd July) "there was no engagement at all." His lordship thought there was no evidence to support these findings. The evidence was extremely meagre. To avoid sending the case back for further facts to be found the parties agreed certain facts in the Court of Appeal. It was agreed that no notice was given by the workman on 14th July; that the men simply refrained from going to work on the following day, and that they did not even take their tools from the pit, and that at the end of the week they resumed work. Price had returned to work on the provisional agreement, and it was agreed that it contained terms which were subsequently confirmed by the agreement of 2nd September. That agreement provided that "this agreement shall continue in force from 15th July, 1915, until" and so forth, and required that each workman, as a term of his engagement, should sign the engagement book. Price signed that book. There was, therefore, evidence of continuous employment, and there was no evidence to support a finding that there was a breach of continuity of employment. For the applicant to succeed she had to prove, not merely an interruption of work, but an interruption of employment during the three years before the accident. The county court judge found that she had proved it. But there was no evidence to support his finding. The decision, therefore, of the Court of Appeal was right.—COUNSEL, for the appellant, *Tindal Atkinson*, K.C., *Llewelyn Williams*, K.C., *Villiers Meagre* and *F. J. Van den Berg*; for the respondents, *Compston*, K.C., and *D. Rowland Thomas*. SOLICITORS, *Warren & Warren*, for *Edward Roberts & Lewis*, Dowlais; *Ullithorne, Currey, & Co.*, for *D. W. Jones & Co.*, Merthyr Tydfil.

[Reported by ERSKINE REID, Barrister-at-Law.]

Court of Appeal.

ROFF v. BRITISH AND FRENCH CHEMICAL MANUFACTURING COMPANY (LIM.). No. 1. 12th and 13th June.

LIBEL—PRIVILEGE—COMMUNICATION IN COURSE OF BUSINESS—COMMON INTEREST—PUBLICATION TO CLERK.

A firm having a dispute with another firm as to a commercial contract, the former wrote to the latter, informing them that they had appointed R. their arbitrator, and received a reply refusing to accept R. on the ground that he had a "German name." R., who was not a German, having brought an action for libel on this letter, recovered damages.

Held, that the question of the appointment of a suitable arbitrator was a matter in which both firms had a common interest, and that the occasion was privileged.

Held, further, that the privilege was not lost by the letter having been opened, in the ordinary course of business, by a clerk employed by the firm to which it was addressed.

Edmondson *v.* Birch & Co. (Limited) (1907, 1 *K. B.* 371) *followed*.

Appeal by the defendants from a verdict and judgment at trial before Darling, J., and a special jury. The plaintiff was a departmental manager in a firm of Messrs. Thornett & Fehr, and in the course of his duties he transacted business with members of the Baltic, the Corn Exchange, and the Commercial Sale Rooms, where he was well known. He was frequently appointed to act as arbitrator in commercial disputes. In October, 1917, the defendants had a dispute with a firm, Messrs. Mann & Cook, concerning a contract, which provided that all disputes were to be referred to arbitration, and Mann & Cook wrote the defendants informing them that they had appointed the plaintiff as their arbitrator. In reply, the defendant Gibson, who was a director of the company, wrote as follows:—"We are in receipt of yours of the 8th inst., and we decline to accept a man with the German name of Roff as your arbitrator. If you have no Englishman to appoint, then we will go to the courts." The plaintiff brought this action, claiming damages for libel, contending that the words suggested he was a German, and had no right to go on the Baltic, from which Germans were excluded, and was an unfit person to act as arbitrator. The defendants pleaded privilege. At the trial the jury found that the letter was libellous, but that there was no malice, and awarded him £50 damages. The defendants contended that they ought to have judgment, as the letter was written on a privileged occasion; but the judge ruled that the occasion was not privileged, because there was publication of the letter, not only to Messrs. Mann & Cook, but to one of their clerks, who had opened and read the letter before placing it on his principal's table. The defendants appealed, and the plaintiff cross-appealed on the ground of misdirection as to malice.

THE COURT allowed the appeal.

SWINFEN EADY, M.R., after stating the facts and reading the letter, said that the plaintiff altogether denied that he was a German or other than a natural-born British subject; the defendants did not press their objection, and he acted as arbitrator. The jury found the letter was a libel, but negatived malice, and the defendants contended their letter was written on an occasion of qualified privilege. Although each party had to appoint their own arbitrator, an arbitrator was not a mere advocate for the party appointing him, as was sometimes thought, and it could not be disputed that the occasion was one in which the parties who wrote and received the letter had a common interest. That being so, the occasion was a privileged occasion. But it was contended by the plaintiff's counsel that, even if the occasion was privileged, the matter was outside the privilege of the occasion. There might be cases where extraneous matter would deprive a communication of the protection afforded by privilege, but here there was nothing irrelevant. Both parties were interested in a suitable arbitrator being appointed, and the letter was directly referable to what the writer considered to be a disqualification in an arbitrator. The publication, therefore, was privileged unless there was malice, which the jury had negatived. Then a question arose as to the ruling of the learned judge. The letter to Mann & Cook was opened by a clerk in their employment, and placed on his principal's desk by him. There was no question of publication; the only publication alleged was to Mann & Cook, and that was amply proved. The judge did not exclude from the jury the circumstances as to the opening of the letter, but only as bearing on the question of malice, not on the question of publication. The mere fact that a defamatory letter was accidentally published to a third party did not by itself destroy any privilege protecting the letter. In *Edmondson* v. *Birch & Co.* (*Limited*) (1907, 1 K. B. 371) Cozens-Hardy, L.J., said: "In the ordinary course of business such a document must be copied, and find its way into the copy letter-book or telegram-book of the company or firm. The authorities appear to me to shew that the privilege is not lost so long as the occasion is used in a reasonable manner and in the ordinary course of business"; and Fletcher Moulton, L.J., said: "If a business communication is privileged, the privilege covers all incidents of the transmission and treatment of that communication which are in accordance with the reasonable and ordinary course of business." It was not suggested there that the letter was not sent in the ordinary course of business. In *Pullman* v. *Hill* (1891, 1 Q. B. 524) the defamatory letter was written to a firm consisting of several persons, some of which were outside the privilege, and the letter was opened by one and read by two other clerks. The plaintiff therefore was not entitled to recover, the appeal would be allowed, and judgment entered for the defendants. On the cross-appeal the plaintiff had wholly failed to shew that the learned judge's direction as to what in law would constitute malice was insufficient or inadequate, and that appeal would be dismissed.

SCRUTTON and DUKE, L.JJ., delivered judgment to the same effect.—COUNSEL, *Douglas Hogg*, K.C., and *Maddocks*; *J. B. Matthews*, K.C., and *Ricardo*. SOLICITORS, *J. I. Jones*; *Alexander Rubens*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

Re EGAN. KEANE *v.* HOARE. Eve, J. 4th June.

WILL—CHARITABLE BEQUEST—SUPERSTITIOUS USES—BEQUEST FOR MASSES.

The law has been settled for close upon a century that a bequest for masses for the dead is void.

By his will dated 29th November, 1916, the testator bequeathed to the Dominican Fathers, Black Abbey, Kilkenny, £100 for masses. The testator died in December, 1916, domiciled in England, and his will contained also a residuary bequest also for masses. This summons, issued by the executors, to which the Prior of the Dominican Fathers and parties representing the next of kin of the testator were defendants, raised the question whether the bequest for masses was valid. In support of the bequest it was argued that the disabling sections of the Roman Catholic Relief Act, 1829, were obsolete, that a gift for masses was now a good charitable gift, as being an alms-offering to the priest, and not for the benefit of a particular individual, that the decisions as to what constituted a superstitious use were based on the statute 1 Ed. 6, c. 14, forfeiting gifts of land for masses, and here there was no gift of land, and that therefore the bequest in the present case was not for a superstitious use.

EVE, J.—I do not think it is open to me to express any opinion of my own upon the arguments which have been addressed to me in support of these bequests. The decided cases are too strong, and the law upon this matter has been settled for close upon a century. If it is to be altered that must be done by the House of Lords. I have no power to do it, and must therefore declare that the bequests are void, and that in the events which have happened, the amounts named fall into the residue, and that residue, being personalty and undisposed of, passes to the next of kin.—COUNSEL, *Marcy*; *McMullan*; *J. McVeagh*; *Topham*; *Sir A. Callagan*; *J. A. R. Cairns*. SOLICITORS, *Ellis, Leathley, & Willis*; *Witham, Roskell, Munster, & Weld*; *H. J. Speechley*; *H. Z. Deane*.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Re SAVAGE. CULL *v.* HOWARD AND OTHERS. Sargant, J. 28th May.

EXECUTOR—RETAINER—LEGACY OF STOCKS TO A DEBTOR TO THE TESTATRIX.

The right of retainer only arises where there is a right to receive the debt, and the legacy or fund is payable by the person entitled to receive the debt.

Cherry *v.* Boultbee (1839, 4 *My. & Cr.* 442).

An executor is not entitled to exercise a right of retainer over specifically devised stocks against a debt due to the testator by the legatee of those stocks.

Re Taylor (1894, 1 *Ch.* 671) *applied*.

This was an originating summons taken out by an executor to determine whether he ought to retain any portion of certain stocks, specifically bequeathed to a legatee, to satisfy her indebtedness to the estate, under the following circumstances: The testator, Annie Savage, who was a spinster, made her will in 1896, which contained the following bequest: "I give, devise, and bequeath to Alice Kate Howard, the wife of Walter Howard, my investment of £400 and £300, together £700, Queensland Stock, and £400 Victoria Inscribed Joint Stock, in all £1,150, for her sole use and benefit absolutely." There were other bequests, followed by a gift of residue to Anne S. Cull, or to her children if she predeceased the testatrix. Mrs. Howard was a very old friend of the testatrix, and became in financial difficulties, and the testatrix lent her £500 on a promissory note, dated 9th June, 1903. In 1904 she paid interest, but gave no later acknowledgment of the debt, and Mrs. Howard swore in her affidavit that after her business had failed in 1904 the testatrix never asked her for payment of the principal or interest; and when the testatrix was staying with Mrs. Howard in 1911 she told her she "need not worry about the promissory note, as on her return home she would destroy the same." Anne S. Cull died in 1908, leaving several children, some of whom survived the testatrix, who died in 1917. Mr. Thomas Cull, the executor of the testatrix, took out this summons against Mrs. Howard and Mrs. Cull's children to determine whether he ought to retain any part of the stock against Mrs. Howard's indebtedness to the estate.

SARGANT, J., after stating the facts, said:—Notwithstanding what was said by Kekewich, J., in the case of *Re Akerman* (1891, 3 Ch. 212, at p. 219), the right alleged is properly called one of retainer. Lord Cottenham, L.C., in *Cherry* v. *Boultbee* (1839, 4 My. & Cr. 442), said, at p. 447, that the right could only arise where there was a right to receive the debt, and the legacy or fund was payable by the person entitled to receive the debt. In the case of *Re Taylor* (1894, 1 Ch. 671), Chitty, J., deliberately used the word "retainer" throughout his judgment, and said that the law was settled that as against a specific devisee, or, in the case of a specific bequest of leaseholds or of chattels, there was no right of retainer. In order that the right may exist there must be money against money, and the fact that the gift to the debtor is something like money, or which might be easily turned into money, does not give the executor the right alleged. The executor, in the present case, is not entitled to retain any part of the stocks against Mrs. Howard's debt.—COUNSEL, *J. Israel; Mark Romer*, K.C., and *Ashton Cross; Rolt*, K.C., and *Dighton Pollock; P. F. S. Stokes*. SOLICITORS, *Bertie F. Browne; T. H. Hiscott; A. J. Carruthers*.

[Reported by L. M. MAY, Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In the Estate of ~~SARAH~~ WOOLF (Deceased). McCardie, J. 3rd June.

ADMINISTRATION—MOTION FOR GRANT—APPLICANT A BRITISH SUBJECT RESIDENT IN ENGLAND BUT DOMICILED IN GERMANY—GERMAN RELATIVES EQUALLY ENTITLED TO GRANT—GRANT MADE TO APPLICANT.

The Court will make a grant of letters of administration to a next-of-kin who is a British subject resident in England, though domiciled in an enemy country, with enemy relatives in that country equally entitled to the grant, where no good cause is shewn against the application.

Counsel applied that a grant of letters of administration of the estate of Sarah Woolf (Deceased) should be made to Stewart Woolf, the only son of the deceased, who died on 20th April, 1916, in Bavaria, intestate, leaving estate of the value of £1,034. A grant had been refused in the registry. The deceased was the daughter of a British subject, and was born in Glasgow. In 1864 she married Samuel Woolf, who was also a British subject, and by him had three children, of whom the applicant was one, all born in England and therefore British subjects. In 1877 the deceased and her husband went to Germany, where they both died. The husband never became naturalised in Germany, and died there a British subject. The other two children of the deceased were both daughters, who had married Germans and had therefore become German subjects. It was feared that the applicant, if the grant was made to him, might send their share to his sisters in Germany, and that was the reason for the refusal to make the grant in the registry. The deceased at her death was domiciled in Bavaria. At the outbreak of war the applicant was interned at Ruhleben as a British subject, but had been released and was now residing in England. *Primâ facie* he was clearly entitled to a grant, and good cause must be shewn for rejecting his application. Here there was no cause except that for many years he had been resident in Germany. There was nothing to shew that he had ever tried to acquire a German nationality or that he had exhibited hostility to this country, nor was there any suggestion of any sort against him. Therefore a grant to his mother's estate ought to be made to him as a British subject. The two sisters in Germany were entitled to the grant equally with the applicant. The risk of the applicant sending any of the money to his sisters in Germany was amply provided against by the Trading with the Enemy Act and the Defence of the Realm Regulations. It would be the duty of the applicant to acquaint the Public Trustee and to hand him the money due to his sisters. The Public Trustee had decided that as the deceased died domiciled in Germany he could not take the grant, and that he could only administer English estate.. Counsel cited and discussed: *In the Estate of Schiff* (*Deceased*) (1915, p. 86), *In the Estate of Grandt* (*Deceased*) (1915, p. 126), and *In the Estate of Koenigs* (*Deceased*) (1915, W. N. 24).

McCARDIE, J., after stating the facts, said: *Primâ facie* the applicant is clearly entitled to the grant, and good cause must be shewn for rejecting his application. What cause has been shewn? None that I can see except that the applicant was resident in Germany. It has not been shewn that he ever acquired or wished to acquire a German nationality, nor that he ever shewed hostility to England. No grounds have been shewn for anything upon which the Secretary of State could intern him. Now, undoubtedly the two sisters are of German nationality, and by German as well as by English law they, with their brother, the applicant, are equally entitled to their mother's estate as beneficiaries. But I think, under the existing law in this country, there is sufficient protection against the applicant paying over any of the estate to his sisters. I think, however, that the Public Trustee should be informed. There are two cases, to which I was referred, which I will mention, namely: *In the Estate of Schiff* (*Deceased*) (*supra*). In that case all the relatives who could apply for administration were alien enemies and the beneficiaries also. Under those circumstances Deane, J., held that the Public Trustee was the right person to take the grant. In *In the Estate of Grandt* (*Deceased*) (*supra*) the deceased was an alien enemy, and to my mind the point raised in the present case did not arise. There will be a grant of letters of administration of the estate to the applicant.—COUNSEL, *T. Bucknill*. SOLICITORS, *Murray, Hutchings, & Co.*

[Reported by C. G. TALBOT-PONSONBY, Barrister-at-Law].

CASES OF LAST SITTINGS.

Court of Appeal.

HARRIES v. CRAWFORD AND OTHERS. No. 1.
10th, 13th, 14th and 15th May.

EDUCATION—NON-PROVIDED SCHOOL—DISMISSAL OF HEADMASTER BY MANAGERS—GROUNDS CONNECTED WITH RELIGIOUS INSTRUCTION—IRREGULARITY IN APPOINTMENT OF CERTAIN MANAGERS—QUORUM DULY QUALIFIED—EDUCATION ACT, 1902 (2 ED. 7, C. 42), S. 7 (1) (C), SCHED. I (B) (1) & (3).

The headmaster of a non-provided school having written a letter to the diocesan inspector, complaining of a report which the latter had made upon an inspection by him of the school in religious knowledge, and having in consequence, been given three months notice to terminate his agreement by the managers,

Held, that the dismissal was on grounds connected with the giving of religious instruction in the school, and therefore that the consent of the local education authority was not required.

Held, further, that the fact that two of the five managers present at the meeting which resolved to dismiss the master were not duly qualified under the Act did not invalidate the dismissal.

Appeal by the plaintiff from a decision of Peterson, J. (reported *ante*, p. 471). The plaintiff was the headmaster of the Boys' Elementary School, Sonning, Berks, a non-provided school, having been so appointed by the managers before the Education Act, 1902. The defendants were four foundation managers, and two appointed by local public authorities. On 13th March, 1917, the Rev. R. W. H. Acworth, assistant diocesan inspector of schools for the diocese of Oxford, held a voluntary examination at the school in religious knowledge, including the Church catechism, and afterwards issued a somewhat unfavourable report. The plaintiff, being dissatisfied with the report, consulted the other teachers, and then drew up and signed a letter of protest, which was also signed by the other teachers, to Mr. Acworth. The letter suggested that the report had been influenced by alleged differences of opinion between the inspector and the vicar of the parish, proposed that he should no longer continue to inspect the school, and intimated

that unless some satisfactory arrangement was made, the teachers would lay the matter before the bishop. Mr. Acworth, having reported the matter to the managers, the vicar, as one of the managers, wrote to the plaintiff informing him that, in consequence of the letter, the managers had suspended him from his office, and reported him to the Berks Education Committee with a view to his dismissal. The defendants then closed the school, but, the plaintiff having withdrawn his protest, and apologised, they re-opened it. At a subsequent meeting the managers resolved unanimously to give the plaintiff three months' notice terminating his engagement. In reply to a letter, the Berks Education Committee wrote to the managers saying that, in the circumstances, their consent was not necessary to the plaintiff's dismissal. The plaintiff then brought this action, claiming an injunction to restrain the defendants from dismissing him until his engagement should be lawfully determined, and for a declaration that the managers were not a properly constituted body, and had no power to dismiss him without the consent of the local education authority. Peterson, J., following the decision in *Young* v. *Cuthbert* (1906, 1 Ch. 451), held that the plaintiff could not complain that he had not been effectively discharged because the consent of the local authority had not been obtained, and dismissed the action. The plaintiff appealed.

THE COURT dismissed the appeal

SWINFEN EADY, M.R., having stated the facts, and read the letter written by the plaintiff to the Rev. R. W. Acworth, proceeded. The first question the Court had to consider was whether the three months' notice which had been given by the managers to the plaintiff was a valid notice, or whether the consent of the education authority was required. By the Education Act, 1902, s 7 (1) (c), the consent of the local authority was required to the dismissal of a teacher, unless it was on grounds connected with the giving of religious instruction in the school. Therefore, if the dismissal was on grounds connected with the giving of religious instruction, the consent of the local education authority was not required. The school was inspected to examine into its efficiency in giving religious instruction, and the result of the report was the angry letter written by the plaintiff to the diocesan inspector. It was quite obvious that the inspection was connected with the giving of religious instruction, and impossible to say that the grounds of dismissal were not solely so connected. They had nothing whatever to do with the giving of any secular instruction. That being so, in his lordship's opinion, the consent of the local education authority was not required. Then it was said that the managers of the school were not duly qualified. By section 6 (2) of the Education Act, 1902, all non-provided elementary schools were to have a body of managers, consisting of not more than four foundation managers, and two appointed, one by the county council, and one by the minor local authority—in this case the Sonning parish council. These had been appointed, and by an order of the Board of Education the vicar of the parish was to be an *ex officio* foundation manager, so that there was a quorum of three duly qualified managers, as required by the Act. The other three managers had not been duly elected at a subscribers' meeting in accordance with the order of the Board, but the acts of the body were not invalidated by the presence on it of two of the three not duly qualified managers: Education Act, 1902, Schedule 1. (B) (1) and (3). The result was that the notice terminating the plaintiff's engagement must be treated as a valid notice. The appeal therefore failed, and must be dismissed.

WARRINGTON and DUKE, L.JJ., delivered judgment to the same effect, the former observing that the case at one time appeared to raise an important question of law on which there had been a difference of judicial opinion; but as it was clear that the plaintiff's letter and dismissal were connected with the giving of religious instruction, that question did not arise.—COUNSEL, *Maugham*, K.C., *A. A. Thomas*, and *Archer*; *Tomlin*, K.C., and *Sheldon*. SOLICITORS, *Baker & Nairne*; *Rawle, Johnstone, & Co.*, for *Blandy & Blandy*, Reading.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

GOUSKY *v.* DURRELL. No 2. 2nd May.

DISTRESS—TOOLS OF TRADE—PRIVILEGED GOODS—VALUE OF PRIVILEGED GOODS LEFT AFTER DISTRESS—ONUS OF PROOF—LAW OF DISTRESS AMENDMENT ACT, 1888 (51 & 52 VICT. C. 21), S. 4—COUNTY COURTS ACT, 1888 (51 & 52 VICT. C. 43), S. 147.

The plaintiff, a tailor's presser, was tenant to the defendant of a house let to him at 13s. a week. The rent being £4 13s. in arrear, the defendant put in a distress, and among the goods seized was a sewing machine. In this action the plaintiff claimed that the sewing machine had been wrongfully distrained, in contravention of section 4 of the Law of Distress Amendment Act, 1888. The county court judge, at the close of the plaintiff's case, gave judgment for the defendant, holding that the plaintiff had failed to give evidence that the defendant did not leave £5 worth of bedding or wearing apparel on the premises after the distress.

Held, that the decision of the county court judge was right, as the onus lay upon the plaintiff, who alleged the illegal distraint, to prove that section 4 of the Act of 1888 had been contravened by the distrainor in not leaving upon the premises wearing apparel, bedding, and tools of trade to the value of £5, and not upon the defendant of shewing that he had left such value.

Decision of the Divisional Court (62 SOLICITORS' JOURNAL, ante, p. 175; 1918, 1 *K. B.* 104) *affirmed.*

Appeal by the plaintiff from an order of the Divisional Court (reported *ante*, p. 175) affirming a judgment of the learned judge at Whitechapel County Court.

PICKFORD, L.J., in dismissing the appeal, said the appellant—the plaintiff in the action—in his particulars of claim, alleged that "on or about the 22nd day of November, 1916, the defendant wrongfully distrained on the plaintiff's goods at 170, Mile End-road, Stepney, by restraining on a Singer sewing machine, in contravention of section 4 of the Law of Distress Amendment Act, 1888." That section provided that any chattels of the tenant, or his family, which would be protected from seizure in execution under the County Courts Act, should be exempted from distress for rent; and section 147 of the County Courts Act of the same year, which was substituted for section 96 of the Act of 1846, provided that "every bailiff or officer executing any process of execution issuing out of the court against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade, to the value of £5, which shall to that extent be protected from such seizure)." Now in the present case the plaintiff failed to give any evidence as to the value of the goods left, and the county court judge decided there was no evidence before him to support the plaintiff's claim, and he entered judgment at the close of the plaintiff's case for the defendant. The question raised by this appeal was whether, in such an action, it was for the plaintiff or the defendant to prove the value of the privileged goods left upon the premises after the distress. The plaintiff contended that even if, as the judge held, the onus was upon him, under the statute in this case it was immaterial whether it was or not, for the distress must be bad either under the statute or at common law. But the plaintiff was not entitled to set up that the distress was bad at common law, for he based his claim upon a violation of section 4 of the statute, which did not touch the protection from distress extended to the tools of a man's trade at common law. It was contended further by the appellant's counsel that in section 147 of the Act of 1888 the words "to the value of £5" referred to the tools of trade only, or that under the section the landlord was bound to leave £5 worth both of (1) bedding and apparel and (2) tools of trade. That point was not taken in the county court, and therefore this Court was not entitled to consider it. On the point that was raised by the appeal, namely, on whom was the onus of proof that the landlord had not left £5 worth of wearing apparel, bedding and tools of trade, the decision of the Divisional Court, in his lordship's opinion, was right. The appeal therefore failed.

WARRINGTON and SCRUTTON, L.JJ., agreed in this view, and the appeal was dismissed with costs.—COUNSEL, for the appellant, *H. S. Q. Henriques*; for the respondent, *G. W. H. Jones*. SOLICITORS, *G. Vandamm & Co.*; *Forbes & Son*.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

Re **WYATT'S APPLICATION.** Peterson, J. 8th and 14th May.

PRACTICE—COURTS (EMERGENCY POWERS) SUMMONS—COSTS—ASSESSMENT OF GROSS AMOUNT FOR COSTS—COURTS (EMERGENCY POWERS) ACT, 1914 (4 & 5 GEO. 5, C. 78), S. 1—R.S.C., ORD. 65, R. 27, SUB-RULE 38A.

Where mortgagees took out an application under the Courts (Emergency Powers) Acts to enforce their security because the mortgagor refused to continue to pay an agreed increase of interest, and the summons was repeatedly adjourned for the respondent to file evidence, and on the adjournment to the Judge the respondent ultimately agreed to pay the increased interest, and the applicant's costs were ordered to be taxed and added to their security; and on the taxation the learned taxing master taxed the bill down and allowed a small lump sum, exercising his power under ord. 65, r. 27, sub-rule 38a, stating, in his answers, that he had applied the case of Re Commonwealth Oil Corporation (1917, 1 *Ch.* 404), *and had had regard to the practice as to allowing a small fixed sum in Courts (Emergency Powers) cases; and he appeared to take the view that the value of the property dealt with was the difference between the rates of interest,*

Held, on the summons to review, that the master must have regard to all the circumstances, and if the costs had been caused or increased by the conduct of the defendant, that must be taken into consideration before deciding that the costs were excessive; moreover, the application was for leave to realize a security of £900, and the learned taxing master had proceeded on a wrong basis, and was in error in taking the view that the value of the property was the difference between the rates of interest. Re Commonwealth Oil Corporation (Limited) (1917, 1 *Ch.* 404) *merely decides that the words "or that from any other cause" is not limited to cases ejusdem generis with what has gone before, i.e., misconduct or negligence; but the last words of the rule must, nevertheless, not be applied disjunctively.*

This was a summons to review a taxation of costs. In 1917 certain mortgagees applied under the Courts (Emergency Powers) Act for leave to enforce their mortgage security for £900. That summons was the result of the refusal by the mortgagor, in September, 1916, to

continue to pay the increased rate of interest which he had agreed to pay in August, 1915. The summons was several times adjourned to allow the respondent to file evidence. When it came before the master he intimated that he was not disposed to grant the application if the interest was increased, because the security was sufficient. The respondent, however, desired certain further conditions as to the mortgage not being called in, and the case came on again, and was adjourned to the Judge. The respondent then undertook to pay the interest, and no order was made on the summons, except that the applicant's costs be taxed and added to their security. They carried in their bill for £30 5s. 10d., and the taxing master was asked by the respondent to exercise the power given to him by ord. 65, r. 27, sub-rule 38*a*, and fix a lump sum, which he did, fixing £12 19s. as a reasonable and proper amount to be allowed, "having regard to the nature of the business transacted, the interests involved, and the value of the property to which the costs related." The taxing master, in his answers, said that, but for the decision in *Re Commonwealth Oil Corporation* (1917, 1 Ch. 404), he would not have assessed the costs as he had done, as there was no suggestion of misconduct. He referred to the practice of the Chancery Division to give a fixed amount for costs in Courts (Emergency Powers) cases. He also took the view that the value of the property to which the costs related was the difference between the two rates of interest, and not the amount of the security.

PETERSON, J., after stating the facts, said: In many small cases under the Courts (Emergency Powers) Acts costs are assessed in the Chancery Division in the way to which the taxing master has referred, but there is no invariable practice to that effect, as, indeed, is shewn by the order in the present case; and if the costs of such an application have been increased by the delay or unreasonable conduct of the respondent, I cannot suppose that any judge would come to the conclusion that the applicant ought to bear the additional costs which have been occasioned by the respondent's conduct. The taxing master has acted under the latter portion of sub-rule 38*a*, but the words there used cannot, in my opinion, be read disjunctively. A taxing master cannot, for instance, properly have regard only to the value of the property and disregard the fact that the costs have been occasioned by the chicanery or misconduct of a defendant. He must have regard to all the circumstances of the case, including the three conditions to which his attention was specifically called by the sub-rule; and if the costs have been caused or increased by the conduct of the defendant, he must take that fact into consideration before coming to the conclusion that the costs were excessive. In the present case I am of opinion that the taxing master has proceeded on a wrong principle, and is in error in taking the view that the value of the property in question is the difference between the two rates of interest. The application was for leave to realize a security for £900, and the costs were incurred in connection with that application. The matter must go back to the taxing master, and then if it is contended that he should exercise his power under sub-rule 38*a*, he will, no doubt, consider, amongst other things, the question whether much of the costs have not been occasioned by the delay of the respondent in offering the terms to which he finally agreed before the Judge.—COUNSEL, *J. M. Gover; Warwick Draper.* SOLICITORS, *Mills & Morley; Fraser & Christian*, for *W. H. Bolitho, Portsea.*

[Reported by L. M. MAY, Barrister-at-Law.]

King's Bench Division.

REX *v.* WOOD AND OTHERS. *Ex parte* **FARWELL.** Div. Court. 12th April.

JUSTICES—CONVICTION—AMENDMENT—SALE OF MILK IN EXCESS OF FOOD CONTROLLER'S PRICE—CHARGES ON DIFFERENT DATES—DUPLICITY—INTENTION OF JUSTICES TO CONVICT FOR ONE OFFENCE ONLY—CONVICTION DRAWN UP BY MISTAKE FOR TWO OFFENCES—CERTIORARI TO QUASH—POWER OF COURT TO AMEND—QUARTER SESSIONS ACT, 1849 (12 & 13 VICT. c. 45), s. 7.

On a charge before justices for selling milk on two separate dates at prices higher than the maximum fixed by the Food Controller, the justices intended to convict for one offence only, as their attention had been drawn to the objection for duplicity in the information. By a mistake the conviction was drawn up as for the two offences, and a rule nisi *for a writ of* certiorari *was obtained to quash the conviction for duplicity.*

Held, that the rule must be made absolute, but that on the return to the writ the Court might amend the error under the Quarter Sessions Act, 1849.

Rule *nisi* for *certiorari*. The applicant, Farwell, was charged before justices with having sold on the fifth and sixth days of October, 1917, at Milford-on-Sea, in the county of Southampton, a quantity of milk at the rate of 1s. 10d. per gallon, being in excess of the maximum price of 1s. 5d. fixed by the Food Controller in the Milk (Prices) Order, No. 939, 1917, for October, 1917. The justices held that the offences charged on those days were proved, but to prevent objection to a conviction on the ground of duplicity, they intended to convict for one only of the offences. The conviction, as drawn up, however, stated that Farwell had been convicted and fined £20 and costs for having, on 5th October and 6th October, 1917, unlawfully sold milk over the maximum price fixed by the Food Controller. A rule *nisi* for a writ of *certiorari* was obtained by Farwell to bring up the record of the conviction, on the ground that it was bad for duplicity, and that the information wrongly purported to contain the separate offences. It was argued for the respondent on shewing cause that this was a mere mistake in drawing up the order, and not a mistake in substance, and it could be cured under section 7 of the Quarter Sessions Act, 1849, upon the return to the writ. For the applicant it was argued that the mistake was one of substance, and not of form.

DARLING, J., said that when the case came on for hearing by the justices the solicitor for the prosecution called attention to the insertion of the two dates, and asked that if there were a conviction it might be for one of the days only. It was perfectly plain that the bench did not intend to convict of two offences; they were asked by the solicitor for the prosecution to convict of one offence, and they intended to find that one offence only had been committed. The conviction ought to have been drawn up with only one or the other of those dates, whichever might be selected, and it would then have been in accordance with what passed before the magistrates. The defect could be cured under Baines's Act (the Quarter Sessions Act, 1849), upon the return to the writ (*Reg.* v. *Higham*, 1857, 7 El. & Bl. 557), so that the correction would state that the offence was committed on one only of the dates mentioned. The rule would be made absolute, but the applicant must bear in mind that on the return to the writ it would be in the power of the Court to make the amendment, and that it might be made.

AVORY, J., and ATKIN, J., concurred.—COUNSEL, *E. Percival Clarke*, for the justices; *S. H. Emmanuel*, in support of the rule. SOLICITORS, *R. H. Bentley*, for *Tattersall & Son*, Bournemouth; *Smith, Fawdon, & Son*, for *E. H. Bone*, Bournemouth.

[Reported by G. H. KNOTT, Barrister-at-Law.]

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 14th June contains the following:—

1. An Order in Council, dated 14th June, making addition to the Statutory List under the Trading with the Enemy (Extension of Powers) Act, 1915, as follows:—Argentina, Paraguay and Uruguay (2); Bolivia (4); Brazil (9); Chile (1); Colombia (1); Costa Rica (11); Ecuador (8); Guatemala (6); Mexico (12); Netherlands (10); Netherland East Indies (5); Norway (3); Persia (1); Peru (14); Portugal (1); Salvador (1); Spain (25); Venezuela (1).

2. A Board of Trade Notice, dated 12th June, that licences under the Non-Ferrous Metal Industry Act, 1918, have been granted to the companies, firms, and individuals mentioned in the Notice.

3. The *London Gazette* of 18th June contains the following:—A Foreign Office (Foreign Trade Dept.) Notice, dated 18th June, that certain names have been added to the list of persons and bodies of persons to whom articles to be exported to China may be consigned.

4. Notices under the Corn Production Act, 1917, that the Agricultural Wages Board (England and Wales) propose to fix minimum rates of wages for Derbyshire, and for Cumberland, Westmorland and the Furness District of Lancashire.

5. A Notice that appointments have been made to the Military Appeal Tribunals as follows:—County of Cambridge and Isle of Ely (2); County of Glamorgan (1); County of Lincoln (4); County of Montgomery (1).

6. An Admiralty Notice to Mariners (No. 719 of the year 1918, revising No. 530 of 1918, which is cancelled), relating to England, East Coast:—River Humber and Approaches—Pilotage, Traffic and Fishing Regulations.

Admiralty Order.

HYDROGEN ORDER.

The Lords Commissioners of the Admiralty, in exercise of the powers conferred upon them by the Defence of the Realm Regulations and all other powers thereunto enabling them, hereby order that from and after

the date of this Order, and until further notice, the manufacture, sale and supply of compressed Hydrogen in the United Kingdom shall be regulated in accordance with such directions as may from time to time be given by the Deputy Controller for Armament Production, Admiralty, and hereby order and require as follows :—

(1) No person or company manufacturing or supplying compressed Hydrogen shall sell or supply the same otherwise than to such persons or companies and in such quantities as the said Deputy Controller for Armament Production shall from time to time direct.

(2) All persons and companies manufacturing or supplying free or compressed Hydrogen for sale or for their own use or as a by-product are required to furnish the particulars specified in the Schedule to this Order within 14 days from the date hereof, and shall thereafter render such full and accurate returns relative to their manufacture, sales or supplies as the said Deputy Controller for Armament Production shall from time to time direct.

(3) All persons and companies requiring to purchase Hydrogen shall render such full and accurate returns as the said Deputy Controller for Armament Production shall from time to time direct.

(4) Any failure to comply with any restriction or condition imposed or with any directions given hereunder will be an offence against the Defence of the Realm Regulations.

11th June.

SCHEDULE.

1. Type of plant, manufacture and process used.
2. The address and locality in which plant is situated, and what facilities for transport of compressed Hydrogen exist or are in contemplation.
3. Amount of free Hydrogen produced per week, stating how many hours the plant is working per week of seven days.
4. Maximum possible amount of free Hydrogen which can be made by the plant, stating how many hours worked per week of seven days.
5. Total amount of Hydrogen consumed at works, and for what purpose. Total amount of Hydrogen disposed of, to whom it is supplied, and for what purpose.
6. Purity of Hydrogen produced, stating what impurities exist and in what quantities.
7. Number, type and free gas capacity of Hydrogen Compressors, stating what type of power is used to drive them, to what pressure they are capable of compressing Hydrogen, and how many hours per day and week of seven days each Compressor is being worked and/or is capable of being worked.

[*Gazette*, 14th June.

Army Council Order.

THE SHEEPSKIN (RUGS AND MATS) ORDER, 1918.

1. No person shall, without a permit issued by or on behalf of the Director of Raw Materials, put into any process of manufacture for the production of Rugs or Mats any Sheepskins or Lambskins in any state.

2. This Order may be cited as the Sheepskins (Rugs and Mats) Order, 1918.

12th June. [*Gazette*, 18th June.

Board of Trade Order.

THE MOTOR SPIRIT (CONSOLIDATION) AND GAS RESTRICTION ORDER, 1918, AMENDMENT ORDER.

1. This Order may be cited as the Motor Spirit (Consolidation) and Gas Restriction Order, 1918, Amendment Order, and shall be read and construed together with the Motor Spirit (Consolidation) and Gas Restriction Order, 1918, hereinafter referred to as the Principal Order, and the two Orders may be cited together as the Motor Spirit and Gas Restriction Orders, 1918.

2. The several words, terms and expressions to which meanings are assigned in the Principal Order have the same respective meanings in this Order.

3. Paragraph 3D of the Principal Order relating to Motor Cabs is hereby revoked, and in lieu thereof the following paragraph shall be substituted :—

3D. For driving a motor cab.

(*a*) For any purpose (except a purpose prohibited by paragraph 5 of the Principal Order) within the limits of the area where it is licensed to stand or ply for hire and to any place situate not more than 3 miles from the boundary of such area and for returning from such place.

(*b*) On any sudden or urgent necessity where life or limb is or may be endangered.

(*c*) For the conveyance of a sick or injured person for the purpose of receiving medical or surgical treatment or for the removal of such person from a hospital or nursing home or from one residence to another and for visits to a person who is dangerously ill.

4. Paragraph 3E (2) of the Principal Order is hereby revoked, and in lieu thereof the following paragraph shall be substituted :—

(2) The owner of every hire car shall keep a record of all lettings with the names and addresses of the hirers and particulars of the journey where the car was hired at the garage, office or place of business of the owner, and such record shall be open for inspection at all times by a police officer or an officer of the Board of Trade.

5. The words "or for conveying passengers on pleasure trips" in paragraph 4 of the Principal Order shall not apply to a motor boat used as a ferry boat, while plying to and fro across a ferry, where a boat was accustomed to ply between the same points in the month of October, 1917.

6. This Order shall come into effect on 24th June, 1918.

15th June. [*Gazette*, 18th June.

Ministry of Munitions Order.

FLAX SEED (IRELAND) ORDER, 1918.

1. It shall be the duty of every grower of Flax in Ireland during the season of 1918 to save the Seed from one-eighth of his crop of Flax, and to comply with any regulations that may be prescribed in this behalf by the Department of Agriculture and Technical Instruction for Ireland, provided that nothing in this Clause shall be deemed to apply to any grower having under flax in the year 1918 a total area not exceeding two statute roods, and provided further than nothing in this Clause shall be deemed to apply to flax of any variety other than a fibre variety.

2. No person shall :—

(i.) accept, receive into his possession, or take delivery of, whether for scutching or otherwise, any flax grown in Ireland in the season of 1918 otherwise than upon receipt of a declaration, made in such form as may be prescribed by the Department of Agriculture and Technical Instruction for Ireland, by the grower or owner of such flax, (*a*) that the provisions of this Order have been complied with, or (*b*) that the grower had under flax in the year 1918 a total area not exceeding two statute roods, or (*c*) that the flax is not the produce of a fibre variety of seed.

(ii.) Take delivery of, or scutch, flax the property of any defaulter under this Order, after receipt from the Department of Agriculture and Technical Instruction for Ireland of notification of default.

3. No person shall, without a permit issued by the Department of Agriculture and Technical Instruction for Ireland, purchase, sell or offer for sale from or on behalf of any grower of flax or any other person, any flax on foot or undeseeded flax straw saved for seed in compliance with the provisions of this Order.

4. Any person failing to comply with any provision hereof, or with any regulation or permit that may be made or issued hereunder, shall be guilty of an offence against the Defence of the Realm Regulations.

5. This Order may be cited as the Flax Seed (Ireland) Order, 1918.

18th June. [*Gazette*, 18th June.

Food Orders.

THE GROWING GRAIN CROPS ORDER, 1918.

1. *Feeding on green crops.*]—A person shall not feed any cattle, or permit or suffer any cattle to be fed with any growing Wheat, Oats, Barley (except Winter sown Barley) or dredge Corn in such a way as to prevent the crop coming to maturity or prejudicially to affect the growth of such crop.

2. *Cutting green crops.*]—A person shall not cut or permit or suffer to be cut before maturity any growing crop of Wheat, Oats, Barley (except Winter sown Barley) or dredge Corn.

3. *Definitions.*]—For the purposes of this Order :—

"Cattle" includes, in addition to cattle usually so called, horses, sheep, goats, deer and swine.

5. *Title.*]—This Order may be cited as the Growing Grain Crops Order, 1918.

5th April.

THE BACON, HAM AND LARD (PROVISIONAL PRICES) ORDER, 1917, AMENDMENT ORDER, 1918.

1. Pursuant to Clause 1 of the Bacon, Ham and Lard (Provisional Prices) Order, 1917, the Food Controller hereby prescribes that on and after the 17th April, 1918, until further notice, the maximum first hand prices for bacon, ham and lard of the descriptions mentioned in the first schedule hereto shall be prices at the rates specified in the first schedule and the maximum first hand prices for bacon and ham of the description mentioned in the second schedule hereto shall be prices at the rates specified in the second schedule.

4. This Order may be cited as the Bacon, Ham and Lard (Provisional Prices) Order, 1917, Amendment Order, 1918.

[Schedules of Prices.]

17th April.

THE POTATOES ORDER (NO. 2), 1917, AMENDMENT ORDER, 1918.

The Food Controller hereby orders that the Potatoes Order (No. 2), 1917 (hereinafter called the Principal Order), shall be amended as follows :—

1. In Clause 2 of the Principal Order, the words "prescribed sum"

shall be substituted for the words "sum of £6" and the following clause shall be added at the end of such clause:—

"The prescribed sum shall as respects potatoes delivered before the 15th April, 1918, be £6, and as respects potatoes delivered between the 15th April, 1918, and 14th May, 1918, inclusive, be £6 10s., and as respects potatoes delivered after the 14th May, 1918, be £7."

5. This Order may be cited as the Potatoes Order (No. 2), 1917, Amendment Order, 1918.

8th May.

THE BREAD ORDER, 1918.

1. *New Bread prohibited.*]—Except where delivery is made to sea-going vessels, bread which has not been made for at least 12 hours shall not be sold.

2. *Shapes of loaves.*]—No loaf of bread shall be sold except in one of the following shapes:—A one-piece tin loaf (such as can be moulded two at a time), a one-piece coburg (pan or oven bottom loaf), a one-piece sandwich loaf, or the shape known in Scotland and Ireland as a one-piece bottom batch loaf or one-piece pan loaf.

3. *Ingredients.*]—No bread shall be made for sale or sold which contains

(*a*) any dried or other fruit; or
(*b*) any eggs or any form of egg products; or
(*c*) any butter, margarine or other form of fat (except fat used for batching or tin greasing purposes); or
(*d*) any sugar, molasses, syrups, honey or other sweetening substances;

or which is made with the addition of any milk, separated milk, skim milk, milk powder or any product of milk other than buttermilk.

7. *Bread to be sold by weight.*]—All bread (other than bread sold for consumption on the premises of the seller) shall be sold by weight and not otherwise.

8. *Loaves.*]—No loaf of bread shall be sold unless its weight be one pound or an even number of pounds.

16. *Revocation.*]—The Bread Order, 1917 [61 SOLICITORS' JOURNAL, p. 303], shall be revoked as from the date when this Order comes into force, but without prejudice to any proceedings in respect of any contravention thereof or to any licences granted thereunder.

17. *Commencement and title.*]—(*a*) This Order may be cited as the Bread Order, 1918.

(*b*) This Order shall come into force on the 1st June, 1918.

18th May.

THE COCOA BUTTER (REQUISITION) ORDER, 1918.

1. *Output of Factories.*]—The occupier of every factory or workshop engaged either wholly or partly in the crushing or extracting or otherwise in the production of Cocoa Butter from the Cocoa Bean shall place at the disposal of the Food Controller the whole of the resultant Cocoa Butter which he has in stock at the close of business on the 29th June, 1918, or which is produced after that day at such factory or workshop, and shall deliver the same to the Food Controller or to his order.

2. *Imports.*]—(*a*) All persons owning or having power to sell or dispose of any Cocoa Butter which may arrive in the United Kingdom after the 29th June, 1918, shall place the same at the disposal of the Food Controller and deliver the same to him or his order.

(*b*) The arbitrator to determine, in default of agreement, the price to be paid for any cocoa butter requisitioned under this clause shall be appointed as to cocoa butter arriving in England or Wales by the Lord Chancellor of Great Britain, as to cocoa butter arriving in Scotland by the Lord President of the Court of Session, and as to cocoa butter arriving in Ireland by the Lord Chief Justice of Ireland.

5. *Title.*]—This Order may be cited as the Cocoa Butter (Requisition) Order, 1918.

21st May, 1918.

THE USE OF MILK (LICENSING) ORDER, 1918.

1. *Licensing of users of milk for manufacturing purposes.*]—Except under and in accordance with the terms of a licence granted by the Food Controller, a person shall not on or after the 17th June, 1918, use any milk, skimmed milk, separated milk, dried milk, condensed milk, butter milk, or any milk preparation in the manufacture for sale of any chocolate, sugar confectionery, or other sweetmeats, or for any other manufacturing purpose except the manufacture of articles intended for human consumption.

2. *Licensing of maker of condensed milk.*]—(*a*) Except under and in accordance with the terms of a licence granted by the Food Controller, a person shall not on or after the 17th June, 1918, make for sale any condensed milk, dried milk, milk preparation, butter or cheese.

(*b*) This clause shall not apply to the making of butter or cheese by a farmer or other producer on the farm where the milk is produced.

4. *Penalty.*]

5. *Revocation.*]—The Milk Factories (Restriction) Order, 1917, and, as respects Great Britain, the Milk (Use in Chocolate) Order No. 2, 1917, are hereby revoked as at the 17th June, 1918, but without prejudice to any proceedings in respect of any contravention thereof.

6. *Title.*]—(*a*) This Order may be cited as the Use of Milk (Licensing) Order, 1918.

(*b*) This Order shall not apply to Ireland.

21st May.

NOTE.—Applications for licences under this Order and correspondence with respect to this Order should be addressed to the Secretary, Ministry of Food (Milk Section), County Hall, Westminster Bridge-road, S.E. 1.

EDIBLE OILS AND FATS AND OIL AND FAT COMPOUNDS (DISTRIBUTION) ORDER, 1918.

1. *Definition.*]—For the purposes of this Order the expression "Edible Oils and Fats" means any of the Oils and Fats mentioned in the Schedule hereto, whether crude, refined, deodorised or otherwise treated, and any mixtures or compounds (other than Margarine) manufactured either wholly or partly from any two or more of such oils or fats whether hardened or not, but does not include any of such oils, fats, mixtures or compounds which are not suitable, or intended for use, as food for human consumption, or in connection with the manufacture or treatment of such food.

2. *Forms of application, &c., may be prescribed.*]—(*a*) The Food Controller may from time to time prescribe forms of application and other documents to be used for the purpose of obtaining, or for any other purpose connected with, Edible Oils and Fats proposed to be distributed or for the time being in the course of distribution by or under the authority of the Food Controller. Any such form or document may contain instructions to be observed as to the completion of the form or document or any other matter.

(*b*) The Food Controller may from time to time issue directions relating to the distribution, disposal, sale or use of Edible Oils and Fats and as to the prices and terms upon which any Edible Oils and Fats may be sold or otherwise disposed of and may by such directions restrict the use of such Edible Oils and Fats to such purposes and by such persons as he may prescribe.

8. *Title.*]—This Order may be cited as the Edible Oils and Fats and Oil and Fat Compound (Distribution) Order, 1918.

25th May.

The Schedule.

VEGETABLE OILS.

Coconut Oil, Cotton Oil, Gingelly (Sesame) Oil, Ground Nut Oil, Kapokseed Oil, Linseed Oil, Maize Oil, Nigerseed Oil, Palm Kernel Oil, Poppy Oil, Rapeseed Oil, Shea Oil or Butter, Soya Oil, Sunflower Seed Oil.

ANIMAL OILS AND FATS.

Neutral Lard, Oleo Oil, Premier Jus, Tallow (Beef), Tallow (Mutton), Stearine (Beef and Mutton), Whale Oil, Lard.

THE SALE OF SWEETMEATS (RESTRICTION) ORDER, 1918

[*ante*, p. 555].

General Licence.

The Food Controller hereby authorizes until further notice all persons who hold an authority from the Central Prisoners of War Committee to pack parcels for prisoners of war, to deal in sweetmeats purchased from them for, and despatched by them to, prisoners of war in such parcels, whether or not such persons have applied for or hold a licence to deal in sweetmeats under the above-mentioned Order.

27th May.

SPIRITS (PRICES AND DESCRIPTION) ORDER, 1918 [*ante* p. 555].

Direction.

In exercise of the powers conferred upon him by the Defence of the Realm Regulations and of all other powers enabling him in that behalf the Food Controller hereby directs that the operation of Clause 7 of the

Spirits (Prices and Description) Order, 1918, shall be postponed until the 1st July, 1918.
31st May.

BRITISH CHEESE (REQUISITION) ORDER, 1918.

1. *Application of Order.*]—This Order shall apply to all British made Whole Milk Cheese manufactured in Great Britain on or after the 1st June, 1918, other than—
(1) Caerphilly Cheese.
(2) Wensleydale Cheese.
(3) Stilton Cheese.
(4) Soft Cheese.
(5) Cheese weighing 2 lbs. or less uncut.
The expression "Stilton Cheese" shall not include Loaf Cheddar.
2. *Requisition.*]—(*a*) Every person who manufactures in Great Britain any cheese to which this Order applies shall place all such cheese at the disposal of the Food Controller, and shall deliver the same to such persons and in such quantities and at such times as the Food Controller may from time to time prescribe by directions under this Order.
Exception.]—(*b*) This clause shall not, except the Food Controller in any particular case otherwise directs, apply to a person who normally while manufacturing cheese manufactures less than 56 lbs. of cheese per week.

* * *

6. *Title.*]—This Order may be cited as the British Cheese (Requisition) Order, 1918.
29th May.
Note.—All correspondence with respect to this Order should be addressed to the Secretary, Ministry of Food (Cheese Section), Palace-chambers, London, S.W. 1.
Makers whose cheese is requisitioned will be required to deliver their cheese to the Food Controller through a factor nominated by them and approved by the Food Controller. The official forms of nomination should be in the hands of makers before the 10th June, 1918. Any approved by the Food Controller. The official forms of nomination should at once communicate with the Ministry of Food.

BRITISH CHEESE (REQUISITION) ORDER, 1918.

General Licence.

The Food Controller hereby authorizes every person from whom cheese is requisitioned under the above Order to continue until further notice to supply to his employees, and, in the case of a cheese factory, also to suppliers of milk to such factory, cheese for consumption in the household of the recipient at the first-hand price for the time being in force; provided that returns are made fortnightly to the Food Controller of the total quantities disposed of under this licence during the preceding fortnight.
This licence may at any time be revoked by the Food Controller either, generally or as respects any particular person.
29th May.

THE CANTEENS AND HOSTELS (LICENSING) ORDER, 1918.

1. Except under and in accordance with the terms of a licence granted by or under the authority of the Food Controller, a person shall not on and after the 14th July, 1918, serve or supply or permit to be served or supplied any article of food in or from any premises to which this Order applies.
2. This Order shall apply only to—
(*a*) premises in which the main business carried on is the sale or supply of food where such sale or supply is not made primarily for the purpose of gain; and
(*b*) huts, hostels, canteens and buffets which are not carried on primarily for the purpose of gain and in or from which food is solely or mainly supplied to members of His Majesty's Forces or of the Forces of His Majesty's Allies or Co-belligerents or to persons employed in the production of Munitions of War.
Provided always that the provisions of Clause 1 of this Order shall not apply to any National Kitchen carried on pursuant to the National Kitchens Order, 1918 [*ante*, p. 412], or to any place where food is supplied by any Local Authority under statutory powers or to such other establishments as the Food Controller may from time to time determine.
3. Applications for licences are to be made in writing to the Secretary, Ministry of Food (Food Survey Board), Palace Chambers, Westminster, S.W. 1, on forms to be obtained from him upon application.
7. (*a*) This Order may be cited as the Canteens and Hostels (Licensing) Order, 1918.
(*b*) This Order shall not apply to Ireland.
31st May.

The following Orders have also been issued :—

The Freshwater Fish (England and Wales) Order, 1918, dated the 14th March, 1918.

The Meat (Licensing of Export) (Ireland) Order, 1918, dated the 29th May, 1918.

The Milk (Ireland) Order, 1918, dated the 30th May, 1918.

The Sale of Sweetmeats (Restriction) (Ireland) Order, 1918, dated the 31st May, 1918.

Military Classification.

Before the House of Commons Tribunal, on the 13th inst., says the *Times*, an application was made for the regrading of a man, aged forty-four, and graded I. It was stated that the man was suffering from a hammer-toe, flat feet, and other defects.
Sir Donald Maclean said that the National Service Instructions of last November stated that Grade I. men were equivalent to category A men and were fit for general service. "I do not care what anybody says," he went on, "or what their authority is. No ordinary man of common sense would believe that a man with the physical defects which are admitted in the papers of the National Service representative is of category A in the old classification. It has been stated that Grade I. in the new military age is different from what it was. That is in distinct contravention of the regulations and of the understanding under which the last Military Service Act passed through the House of Commons. It was clearly understood then that there would be no alteration in the medical standard. Now we know there is an alteration.
"It is impossible for tribunals to disentangle the muddle into which this position has now got. We cannot exercise our discretion as we ought. Grade I. is Grade I., there is no doubt about that; we know what a Grade I. man is. There is no use attempting to throw dust in the eyes of the public by saying that the men are going to be trained in this way or in that way. When they get into the Army the Ministry of National Service has no more to do with what will happen to them than has the chairman of the London County Council. As far as we are concerned, there is only one attempt that can be made to straighten things out, and it is this: We shall completely disregard Grade I. in men over forty-three and treat it as Grade II. That is the only clear line that I think the tribunal can take."
Sir Donald added that it was against the interests of the Army and of the State, and that it was unfair to the individual that there should be that unsatisfactory grading.
The application for regrading was allowed.

Employment of Aliens.

The Minister of National Service desires to call attention again to the Order in Council under the Aliens Restriction Act, on the subject of the employment of aliens, which came into operation on 1st March. Under that Order an employer must furnish to the Minister of National Service returns giving certain particulars with regard to any alien employed in one of the trades or occupations specified in the 5th schedule to the Aliens Restriction Order, and an alien must obtain permission from an employment exchange before he takes up any such employment. Failure to comply with the Order is punishable by six months' imprisonment or a fine of £100. Copies of the Order, including the schedules showing the trades or occupations in question and the returns to be made by employers, may be obtained from any employment exchange, or from the Ministry of National Service, Victoria-street, S.W. 1.

Societies.

The Bar Council.

BARRISTERS AND THE WAR.

All practising barristers called up for military service who desire to have their cases considered are advised to communicate at once with the secretary of the Bar Council.
2, Hare Court, Temple.
15th June, 1918.

The Middle Temple.

The Prime Minister was the guest of the Benchers of the Middle Temple on Saturday, 15th inst. The following is a list of the Benchers and guests who were present:—The Treasurer, the Prime Minister, the Lord Chancellor, Lord George Hamilton, the Rt. Hon. Sir R. Borden, the Rt. Hon. W. F. Massey, Sir R. Garran, Master Lord Mersey, Lord Desart, Master Lord Phillimore, Mr. Saxton Noble, Master Digby, Masters Balfour Browne, Tindal Atkinson, English Harrison, Lord Coleridge, Muir Mackenzie, Sir J. Edge, Scott, Blake Odgers, Sir D. Brynmor Jones, Lord Southwark, Masters Sir R. Wallace, Brogden, Macmorran, Gill, Terrell, Lt.-Col. Hale, Master Lindsay, Lt. D. H. Lindsay, Master Hamilton, Lord Terrington, Masters Clay, Lord Shaw, Kemp, His Honour Judge Selfe, Master Waugh, Mr. H. Manisty, K.C., Masters Honoratus Lloyd, Mr. Justice Bailhache, Master de Colyar, Mr. Theobald Matthew, Master Forbes Lankester, Mr. Owen Lankester, Masters Mr. Justice Sankey, Mr. Justice McCardie, De Gruyther, and Sir George Reid.
When the Masters and their guests arrived in the places at the high table six boys of the Temple Church Choir sang a verse of the National Anthem, followed by a verse of "Land of my Fathers."
There were no speeches in the Hall, and the Press was not admitted.
In the Parliament Chamber, after dessert, the Treasurer, after the toast of "The King," gave the toast "The Prime Minister," and to the remarks of the Treasurer the Prime Minister replied.

Inns of Court Regimental Association.

Among the many problems created by the war, the re-settlement of the soldier in civil life demands immediate attention. The Government has taken prompt steps to deal with the matter, but it is so vast

a problem that the energetic co-operation of the various regimental associations is desirable.

With this end in view a regimental association has been formed in connection with the Inns of Court O.T.C., under the presidency of the Lord Chancellor, and with Field-Marshal Sir Evelyn Wood (the Honorary Colonel of the corps) as deputy-president. Many thousands of officers now serving obtained their Commissions through the Inns of Court, and therefore it will be to the re-settlement in civil life of the officer that the activities of the association will be directed. Arrangements are already being made with the Government Department concerned for a scheme of co-operation which will not only prevent all possibility of redundant effort, but will give the greatest possible benefit to the association's members.

Old members of this famous O.T.C. will welcome the formation of the association, not only for the material advantages it is likely to offer in the way of assisting a demobilized officer back into civil life, but also for the opportunity it will present of the re-union of old comrades.

The organiser's chief difficulty is to get into touch with old members of the Inns of Court, scattered, as they are, throughout every branch of our far-flung Army, and fighting on every front. It is hoped that all such members who hear of the association will write at once to the hon. secretary, Inns of Court Regimental Association, 7, Stone-buildings, Lincoln's Inn, London, W.C. 2, who will at once forward full prospectus and form of application for membership.

The Belgian Lawyers' Relief Fund.

The following further donations are gratefully acknowledged :—

	£	s.	d.
Amount previously notified	953	19	1
T. B. Sugden, Esq. (*fourth donation*)	1	0	0
Blackburn Incorporated Law Association	30	5	0
Hubert James Darby, Esq.	2	2	0
	£987	6	1

Further donations are very urgently needed, and may be sent to "The Joint Hon. Treasurers, Belgian Lawyers' Aid Committee," General Buildings, Aldwych, W.C. 2.

Royal Society of Arts.

"SWINEY" PRIZE FOR WORK ON JURISPRUDENCE.

The Council have to give notice that the next award of the Swiney prize will be in January, 1919, the seventy-fifth anniversary of the testator's death. Dr. Swiney died in 1844, and in his will he left the sum of £5,000 Consols to the Royal Society of Arts, for the purpose of presenting a prize, on every fifth anniversary of his death, to the author of the best published work on jurisprudence. The prize is a cup, value £100, and money to the same amount.

The award is made jointly by the Royal Society of Arts and the Royal College of Physicians. On the occasion of the first award being made the question was discussed between the two bodies concerned as to what share should be allotted to medical jurisprudence, and an arrangement was arrived at that the award should be made alternately to medical and to general jurisprudence. This plan has been continuously followed. On several occasions the question of revising the arrangement has been considered, but after consideration it was determined that there appeared to be no reason to disturb an arrangement which had worked well for so many years, and that it should be continued, with the understanding that if at any time the joint committee of the Royal Society of Arts and the Royal College of Physicians, which was usually appointed to submit a book to the adjudicators, should be unable to find a work of sufficient merit in the class whose turn it was to receive the award, they should be at liberty to recommend a book belonging to the other class.

On the last occasion of the award, in 1914, the prize was awarded for general jurisprudence. It will, therefore, be offered on the present occasion for medical jurisprudence.

Any person desiring to submit a work in competition, or to recommend any work for the consideration of the judges, should do so by letter, addressed to the secretary of the society.

The following is the list of the recipients :—

1849. J. A. Paris, M.D., and J. Fonblanque, for their work, "Medical Jurisprudence."

1854. Leone Levi, for his work, "The Commercial Law of the World."

1859. Dr. Alfred Swayne Taylor, F.R.S., for his work, "Medical Jurisprudence."

1864. Henry Sumner Maine (afterwards K.C.B.), D.C.L., Member of the Legislative Council of India, for his work, "Ancient Law."

1869. William Augustus Guy, M.D., for his "Principles of Forensic Medicine."

1874. The Right Hon. Sir Robert Joseph Phillimore, D.C.L., for his "Commentaries on International Law."

1879. Dr. Norman Chevers, for his "Manual of Medical Jurisprudence of India."

1884. Sheldon Amos, M.A., for his work, "A Systematic View of the Science of Jurisprudence."

1889. Dr. Charles Meymott Tidy, F.C.S., for his work, "Legal Medicine."

1894. Thomas Erskine Holland, D.C.L., for his work, "The Elements of Jurisprudence."

1899. Dr. J. Dixon Mann, F.R.C.P., for his work, "Forensic Medicine and Toxicology."

1904. Sir Frederick Pollock, Bart., and Professor F. W. Maitland, for their book on "The History of English Law before Edward the First."

1909. Dr. Charles Mercier, for his work, "Criminal Responsibility."

1914. John W. Salmond, K.C., for his work, "Jurisprudence."

June, 1918. G. K. Menzies, Secretary.

The French Government and a League of Nations.

The Deputy M. Raiberti has given the French Chamber a report of the Committee appointed by the French Government to state the conditions under which a League of Nations should be established.

This Committee was appointed on 22nd July, 1917, under the presidency of M. Léon Bourgeois. Among its members are : Jules Cambon, M. E. Lavisse, and Baron d'Estournelles de Constant.

The Committee decided that a League of Nations could not envisage the question of an international State superior to existing States, but only the maintenance of peace by the substitution of rightful force in the settlement of international disputes. It proceeds to lay down the principles under which, in its opinion, the League of Nations should be constituted. These principles were adopted unanimously after long discussion, and the Committee recommended that the French Government should now submit them to its Allies for their consideration in order that the Allied Governments may arrive at a complete agreement on all points concerned, before the negotiations for peace are opened.

The Committee is preparing full reports dealing with the history of international organisation—diplomatic, judicial, and economic sanctions, military sanctions and the organisation of international jurisdiction. The Committee expresses the wish that the same preparatory studies should be made in the other countries of the Entente. Thus, when the Allies come to an agreement on this important subject they will be in a position to approach it with full knowledge, when the time comes for its discussion in the negotiations for the treaty of peace.

Sir Walter Phillimore's Peerage.

At the Judicial Committee, on the 13th inst., Lord Shaw, says the *Times*, said: "The Judicial Committee notes with great interest the announcement made of the appointment of their esteemed colleague, Sir Walter Phillimore, to be one of the Peers of the Realm. It is, perhaps, unusual to take official note of such matters, but one cannot fail to see how highly approved of by the profession and by his colleagues on the Bench such an appointment by His Majesty will be.

Mr. P. O. Lawrence, K.C., on behalf of the Bar, thanked Lord Shaw for what he said, because it found a hearty echo from the members of the Bar who had argued before Sir Walter Phillimore as a Judge of first instance, then of the Court of Appeal, and now of the Privy Council. It had been a most welcome announcement to all of them, and he thoroughly echoed what Lord Shaw had been good enough to say.

Sir Walter Phillimore. Thank you, Mr. Lawrence.

Legal News.

Honours and Appointments.

WILLIAM FRANCIS KYFFIN TAYLOR, Esq., K.C., Presiding Judge of the Court of Passage, Liverpool (who has been nominated to be a Knight Commander of the Most Excellent Order of the British Empire), has been appointed to be Judge of Appeal in the Isle of Man under the Manx Judicature Amendment Act, 1918.

The Vice-Chancellor of the University of Birmingham has received a communication from the Lord President of the Council notifying that the election of Lord ROBERT CECIL as Chancellor has been approved by the Crown. The installation will take place on 9th October.

Mr. J. H. ETHERINGTON SMITH having resigned the Recordership of Derby, Mr. HOLLIS WALKER, K.C., has been temporarily appointed to succeed him.

Lieut. EVERARD KENNETH BROWN, who is a member of the firm of Messrs. Kenneth Brown, Baker, Baker & Co., and is attached to the Headquarters Staff, Northern Command, has been made a member of the Order of the British Empire in recognition of services.

Mr. F. GORE-BROWNE, K.C., has been appointed Chairman of the Conciliation and Arbitration Board for Government Employees. Mr. Gore-Browne was called to the Bar by the Inner Temple in 1893, and took silk in 1902. He is a well-known company lawyer.

General.

Mr. Henry Kemp Avory, aged sixty-nine, of Parkstone, Weybridge, Surrey, for many years clerk of the Central Criminal Court, left estate of gross value £45,587.

Judge Greenwell, replying on Tuesday, at Newcastle County Court, to congratulations on his being made C.B.E., said that he was rather inclined to agree with those who thought that such decorations ought not to be given. In any case he had not the remotest idea why the decoration had been given to him, or where it had come from.

Some of His Majesty's Judges will attend the afternoon service in St. Paul's Cathedral on Sunday. The Lord Mayor, Aldermen and Sheriffs will be present in civic state. The Judges on the rota are the Master of the Rolls, Lords Justices Warrington and Duke, and Justices Darling, Coleridge, Horridge, Sankey, Younger, McCardie, and Hill. Canon Alexander will preach.

In the House of Commons on Monday Mr. Balfour, answering Mr. King, said: Certain amendments to the Military Convention with the United States, as originally signed, were proposed by the Foreign Relations Committee of the Senate of the United States of America. In order to meet their views a new Convention has been signed, and is now before the Senate. The Convention, when ratified, will be laid before the House in accordance with the Military Service (Conventions with Allied States) Act. The answer to the last part of the hon. Member's question, as to whether the Convention will be submitted to Parliament before ratification, is in the negative.

In the House of Commons on Monday Mr. Balfour, answering Mr. King, said: So far as I am aware, no Allied State has recognized the independence of the Ukraine. I do not know exactly what date the hon. Member accepts as that on which the Ukraine became separated from the Russian Republic, when he asks whether since then any of the Allies has offered aid to the Ukraine. It may perhaps be sufficient to say that since that region became completely subservient to Germany it has received no assistance from the Allies.

The Property Mart.

Forthcoming Auction Sales.

June 28.—Messrs. FAREBROTHER, ELLIS & CO., at the Grand Hotel, Bournemouth, at 3.30: Tithe Rent Charges (see advertisement, back page, this week).

June 26.—Messrs. TROLLOPE at the Mart, at 2: Freehold Flats (see advertisement, back page, this week).

July 9.—Messrs. ELLIS & SON, at the Mart, at 2: Freehold Properties (see advertisements, back page, this week).

July .—Messrs. HOLLAND & SONS, LTD., at the Mart: Freehold Properties (date not yet definitely fixed) (see advertisement, back page, this week).

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Neville.	Mr. Justice Eve.
Monday June 24	Mr. Bloxam	Mr. Synge	Mr. Jolly	Mr. Church
Tuesday 25	Borrer	Bloxam	Synge	Farmer
Wednesday .. 26	Goldschmidt	Borrer	Bloxam	Jolly
Thursday 27	Leach	Goldschmidt	Borrer	Synge
Friday..... 28	Church	Leach	Goldschmidt	Bloxam
Saturday 29	Farmer	Church	Leach	Borrer

Date.	Mr. Justice Sargant.	Mr. Justice Astbury.	Mr. Justice Younger.	Mr. Justice Peterson.
Monday June 24	Mr. Farmer	Mr. Leach	Mr. Goldschmidt	Mr. Borrer
Tuesday 25	Jolly	Church	Leach	Goldschmidt
Wednesday .. 26	Synge	Farmer	Church	Leach
Thursday 27	Bloxam	Jolly	Farmer	Church
Friday..... 28	Borrer	Synge	Jolly	Farmer
Saturday 29	Goldschmidt	Bloxam	Synge	Jolly

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, June 14.

ELLIS WILLIAMSON, SON & CO, LTD.—(IN VOLUNTARY LIQUIDATION)—Creditors are required, on or after July 18, to send in their names and addresses, and particulars of their debts or claims, to Norman Williamson, 8, Exchange bldgs, Bradford, liquidator

F. W. ELLIOTT & CO, LTD.—Creditors are required, on or before July 13, to send their names and addresses, and the particulars of their debts or claims, to R. S. Dawson, 9, Charles st, Bradford, liquidator.

MALTA TRAMWAYS, LTD. (IN LIQUIDATION).—Creditors are required, on or before July 27, to send their names and addresses, and the particulars of their debts or claims to James Robert Tulloch, 42, Frederick's pl, Old Jewry, liquidator.

G. C. P. & C. SYNDICATE, LTD.—Creditors are required, on or before July 13, to send in their names and addresses, with particulars of their debts or claims, to Charles Albert Radermacher, 36, Camomile st, liquidator.

WHITEHALL CONTRACT CORPORATION, LTD.—Creditors are required, on or before July 13, to send their names and addresses, with particulars of their debts or claims, to Charles Albert Radermacher, 36, Camomile st, liquidator

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—TUESDAY, June 18.

RECTORY ENGINEERING CO, LTD. (IN VOLUNTARY LIQUIDATION)—Creditors are required on or before July 18 to send their names and addresses, and particulars of their debts or claims, to Edward James Wilkinson, 59, John st, Sunderland, liquidator.

WALLIS CO, LTD.—Creditors are required, on or before Aug 23 to send their names and addresses, and particulars of their debts or claims, to Bernard Weatherall Moore and Joseph Henry Jefferys, 5, London Wall bldgs, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, June 14.

Porcupine Investors, Ltd.
Kino Ads, Ltd.
Stuart Smith (Brighton), Ltd.
G. C. P. & C. Syndicate, Ltd.
Whitehall Contract Corporation Ltd.
Sowwell Steamship Co, Ltd.
Ellis Williamson, Son & Co, Ltd.
Percy Brown, Ltd.

London Gazette.—TUESDAY, June 18.

F, Carwardine, Ltd.
Troy Tin Syndicate, Ltd.
Wellingborough Brick and Tile Co, Ltd.
Scrivan & Co, Ltd.
Chokidinghi Tea Estates, Ltd.
James Lewis & Sons Liverpool Copper Wharf Co, Ltd.
Wharfedale Dairies, Ltd.
Buffer Rubber Asphalt Co, Ltd.
Rectory Engineering Co, Ltd.
Hudson Fishing Co, Ltd.
Ec-ko Film Co, Ltd.
Saunderson & Mills, Ltd.
Wallis Co, Ltd.

Creditors' Notices.

Under Estates in Chancery.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, June 14.

KELSEY, RALEIGH NAPIER, Edington, near Bridgwater. June 28. Cochran v. Kelsey, Peterson, J. Robins, Hay, Waters & Hay, 9, Lincoln's-inn-fields.

WILLIS, CHARLES, Forest Drive, Manor Park, Waste Paper Merchant. July 20. Bragg & Nephew, Ltd. v. Davies, Judge in Chambers, Room 689. Thomas Williams Hicklin, 1, Trinity-square, Southwark.

Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, June 14.

ABADIE, RICHARD NEVILE, Belgrave mans July 22 Murray, Hutchins, Stirling & Co. 11, Birchin la

ALEXANDER, Sir GEORGE, Chorley Wood July 5 Charles Russell & Co, 37, Norfolk st, Strand

ALLT, CATHERINE ELIZABETH, Gt Yarmouth Aug 1 W & C Cripps, Son & Daish Tunbridge Wells

ALLT, TERRENCE THOMAS, Folkestone Aug 1 W C Cripps, Son & Daish, Tunbridge Wells

ASHWORTH, JOHN, Rochdale, Baptist Minister July 26 Jackson & Co, Rochdale

BALL, GEORGE, Southport, Plasterer July 12 Grundy, Kershaw, Samson & Co, Manchester

BARFF, JOHN, Kingston upon Hull, Draper's Agent July 11 Maw & Redman, Hull

BARROW, ALICE, Askam in Furness July 8 Thos Butler & Son, Broughton in Furness

BAYNHAM, BENJAMIN OAK, Cheltenham July 11 Jos B C Baynham, 25, Rosedew rd, Hammersmith

BEAVAN, THOMAS SAMUEL, Essex rd, Islington, Rent Timber Manufacturer July 31 Bishop & Fenton-Jones, Bank chmbrs, 76, Kingsland High st

BELL, EMMA, Didsbury, Manchester July 16 Taylor, Kirkman & Mainprice, Manchester

BUCKINGHAM, ARTHUR FREDERICK, Paxton rd, Chiswick July 15 H A Sims, 214, Bishopsgate